Lakhi Narayan Ghose Vs Emperor

Court: Calcutta High Court

Date of Decision: Jan. 6, 1910

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 190(1)(c)

Citation: (1910) ILR (Cal) 221

Hon'ble Judges: Stephen, J; Carnduff, J

Bench: Division Bench

Judgement

Stephen, J.
In this case the Deputy Commissioner of Singbhum ordered a prosecution of the petitioner for wrongfully cutting certain trees

in a forest, and on reading the Explanation we must take him to have done this u/s 190(1)(c) of the Criminal Procedure Code. He also ordered

certain trees to be attached.

2. This Rule has been granted on two points. The first is that he had no authority to order the prosecution; and the second, that he had no authority

to attach the trees.

3. As regards the second part of the Rule, it is admitted that the order was without jurisdiction, and the Rule must be made absolute.

4. As regards the first part, what happened is as follows. The Deputy Commissioner was also the manager of the encumbered estate, and in that

capacity ordered one Kedar Nath Sircar, a servant of the Court of Wards, to make certain enquiries. The order which is now complained of was

made as the result of the report made by Kedar Nath. It is now argued, on the strength of the ruling in Thakur Pershad Singh v. Emperor 10

C.W.N. 775, that he had no authority to do so, because, having received the information as the manager, he could not act upon it as a Magistrate.

In accordance with that ruling, I am of opinion that his action in this matter was illegal, and that the present proceedings must accordingly be

quashed. The Rule is made absolute.

Carnduff, J.

5. In the particular circumstances of this case, I am prepared to agree to the Rule being made absolute. It will, of course, be open to the authorities

to reinstitute proceedings against the petitioner on a firmer basis, should they be so advised.

6. But I am not prepared to accept, without question, the ruling in Thakur Pershad Singh v. Emperor 10 C.W.N. 775, in so far as it lays it down

that a Magistrate is not competent to act u/s 190(1)(c) of the Code of Criminal Procedure on any information which has been transmitted to him in

another public capacity. This clearly goes beyond the provisions of the Code itself; and I am inclined to think that the safeguards supplied by those

provisions are sufficient, and that there is no adequate reason, based, on general principles, for extending or amplifying them. If a Magistrate takes

cognizance, under the clause referred to, on information received from any person other than a police officer, or upon his own knowledge or

suspicion, then he is bound by Section 191 to give the accused an early opportunity for objecting and obtaining a trial at the bands of another

Magistrate. And where a Magistrate is ""personally interested"" in a case, he cannot, u/s 556, try it, or commit it for trial, without special permission.

These provisions follow i he salutary rule that a Judge shall not he a Judge in what may be called his own cause: but they draw the line, advisedly as

I imagine, at trial or commitment, and do not go the length of impeding mere cognizance of crime. Nor would it, in the circumstances of this

country, be advisable to go so far; for, although it is undoubtedly better that a Magistrate should not move at all where he is, or has been, in any

way-himself concerned, it is not difficult to conceive cases in which there might be no one but such a Magistrate competent to act, and his

incapacity to issue process-might involve the escape scot-free of offenders. I should hesitate, therefore, to add to the Statute law on the subject.