

(1904) 10 CAL CK 0001

Calcutta High Court

Case No: Rev. No. 992 of 1904

Har Charan Mukerjee and others

APPELLANT

Vs

The King-Emperor

RESPONDENT

Date of Decision: Oct. 29, 1904

Judgement

Henderson, J.

This case has been referred to me as a third Judge in consequence of the members of the Bench before whom this case was originally heard being unable to agree as to whether the offence of resisting the delivery of possession by a Nazir in execution of a decree of the Civil Court could when subsequently in due course reported by the Nazir to the Munsif be said to have been brought to the notice of the Munsif "in the course of a judicial proceeding" within the meaning of sec. 476, Criminal Procedure Code. It appears that under a warrant directing him to make over possession of the property the subject-matter of the suit to one of the parties under the decree made in the suit the Nazir was obstructed by the Petitioners. He reported the fact to the Munsif who thereupon instituted a proceeding under sec. 476, Criminal Procedure Code, held an enquiry and directed the Petitioners to be sent to the nearest Magistrate to be tried upon a charge under sec. 186, Indian Penal Code.

2. Where in the execution of a decree for the delivery of possession of immoveable property, the officer charged with the execution of the warrant is resisted or obstructed by any person the decree-holder may under sec. 328 of the CPC complain to the Court, that is to the Civil Court, at any time within one month from the time of such resistance or obstruction; and thereupon the Court shall fix a date for the investigation of the complaint but no provision is made in that section and the sections next following for any action to be taken merely upon the report of the officer obstructed.

3. Sec. 195 of the Code of Criminal Procedure however declares that no Court shall take cognisance of (amongst offences) the offence of obstructing a public servant in prosecution of his public functions under sec. 186 of the Indian Penal Code, except

with the previous sanction or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate. In the present case, therefore, a prosecution might have been instituted either with the previous sanction or on the complaint of the Nazir or of the Munsif to whom he was apparently subordinate, but no such prosecution was in fact instituted.

4. It is clear that the offence was not committed before the Munsif; and the question is whether it was "brought under his notice in the course of a judicial proceeding" within the meaning of sec. 476, Criminal Procedure Code. For the meaning of the words "judicial proceeding" reference must be made to cl. (m) of sec. 4 of the Criminal Procedure Code where a judicial proceeding is said to include any proceeding in the course of which evidence is or may be legally taken on oath. At the time when the Nazir reported the fact of his having been obstructed to the Munsif the question between the parties to the suit had been determined in a judicial proceeding and the act of the Nazir himself in delivering possession was, it seems to me, a purely ministerial act. It is true that in one sense the suit was not at an end inasmuch as in consequence of the obstruction, delivery of possession under the decree had not actually been made over to the person entitled to possession under the decree. But so far as any question in the suit was concerned the judicial functions of the Munsif were at an end where he made his decree.

5. After a decree has been made it may of course happen in the course of proceedings in execution of the decree that objections are raised by the parties or by a third person claiming the property which is the subject of the decree and in consequence of such objection, it may be necessary for further judicial proceedings to be held. So in the present case it might be said that it was always possible, upon objection being taken in regard to the execution of the decree for such fresh judicial proceedings to become necessary and that in these proceedings evidence might be legally taken on oath. But at the time when the Nazir made his report to the Munsif, there was in fact no judicial proceeding pending in the course of which the matter of the obstruction could be brought to the notice of the Court; for no objection which might have rendered a further judicial proceeding necessary, had in fact been made.

6. In my opinion, therefore, there was no judicial proceeding in the course of which the alleged offence under sec. 186 of the Indian Penal Code could be brought to the notice of the Munsif. That being so, the Munsif had no jurisdiction under sec. 476, Criminal Procedure Code, to make the order which he did inasmuch as the offence was not brought to his notice in the course of a judicial proceeding. The result is that the rule is made absolute.