

(1923) 02 CAL CK 0006

Calcutta High Court

Case No: None

Priyanath Gupta

APPELLANT

Vs

Lalji Chowkidar

RESPONDENT

Date of Decision: Feb. 15, 1923**Citation:** AIR 1923 Cal 590 : 72 Ind. Cas. 508**Hon'ble Judges:** Suhrawardy, J; Newbould, J; Buckland, J**Bench:** Full Bench

Judgement

Newbould, J.

The petitioner Priya Nath Gupta was convicted by the Sub-Divisional Magistrate of Manikganj of an offence punishable u/s 506, Indian Penal Code, and sentenced to pay a fine of Rs. 200, or in default to undergo six months' simple imprisonment. This conviction and sentence were confirmed on appeal for the Sessions Judge of Dacca. The petitioner has obtained a Rule calling on the District Magistrate to show cause why the conviction and sentence should not be set aside on the following two grounds only-

1. For that the facts proved and found cannot legally constitute the offence of criminal intimidation.
2. For that the prosecution having neither alleged nor adduced any evidence to show that any decree passed by the Arbitration Court was ever sought to be enforced against the will of the person against whom the same was passed by any means whatsoever, the Courts below should have held that an ex parte decree of the said Arbitration Court against the opposite party would be perfectly innocuous and that as such the possibility of such a decree could not constitute a threat of injury within the meaning of Section 503, Indian Penal Code.
3. These two grounds are really one and the same, the second ground setting out in detail the argument on which the first ground is based.

4. The following are the facts proved and found in this case. The petitioner is the President of what is known as the Arbitration Court of Gandhi Maharajke Court at Manikganj. A notice, Exhibit 1, partly printed and partly written, signed by the petitioner and issued under his authority as President of this Court was served on the complainant Laljhi, a village chauki-dar. In this notice it is stated that one Gobin Bhar has filed a claim for Rs. 2,499 against Laljhi who is informed that he should appear before the Court and settle the claim. The notice concludes with the two, following statements: "If, the defendant do not answer the claim on the date fixed the claim will be decreed ex parte on the, evidence of the plaintiff. No objections will be entertained after the passing of such an ex parte decree." Laljhi was frightened by this notice and consulted the Panchayat who reported the facts to the-Magistrate.

5. Criminal intimidation, which is punishable u/s 506, is defined in Section 503, Indian Penal Code, as follows: "Whoever threatens another with any injury to his person, reputation or property with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat commits criminal intimidation."

6. The only question of any difficulty in this case is whether the concluding portion of Exhibit 1 was a threat of injury to the property of Laljhi. If it was such a threat, there can be no doubt that the criminal intent which is the other ingredient of the offence of criminal intimidation has been established. It is found as a fact that this notice did cause alarm to Laljhi. Such a result is a natural consequence of a threat which the person who threatened must be presumed to have intended. I also hold that the inference has been rightly drawn that it was the intention of the petitioner to cause Laljhi to do an act which he was not legally bound to do, namely, to appear before the Arbitration Court, as the means of avoiding the execution of the threat (if it is held to be a threat) that an ex parte decree would be passed against him. On a full consideration I hold that the lower Courts were right in deciding that the statement that a claim for Rs. 2,499 would be decreed ex parte against Laljhi if he did not answer the claim on the date fixed, amounted to a threat of injury to his property. The learned Sessions Judge has compared the petitioner's action to that of a bully who threatens to shoot a person though he has no license to carry fire-arms. To my mind, a better comparison would be that of a person who holds an unloaded pistol at the head of another. The fact that the pistol was unloaded would be no defence to a charge of criminal intimidation if the person threatened was ignorant of this fact. The use of the word "decree" in the notice implies that an order passed by the Arbitration Court would be enforced. Though the Court had no legal power to enforce its decree, a person in the position of Laljhi would naturally fear that it would be enforced by illegal methods. I can see no force in the contention based on the fact that no ex parte decree of the Arbitration Court has ever been enforced. Evidence was taken about two months after the issue of the notice. The omission to take any action to enforce ex parte decrees during that period may have

been due to this prosecution or other causes. It has not been shown that at the time the notice was issued Laljhi had reason to believe that no steps would be taken to enforce a so-called decree against him.

7. I would, therefore, hold that the facts proved and found legally constitute the offence of criminal intimidation and would discharge this Rule.

8. I regret that I am unable to agree with my learned brother. The case will be submitted to the Chief Justice for the appointment of another Judge u/s 429 read with Section 439, Criminal Procedure Code.

Suhrawardy, J.

9. The accused has been convicted in this case u/s 506 Indian Penal Code, and sentenced to pay a fine of Rs. 200, in default six months' simple imprisonment. The charge against him is that as President of a self-constituted Arbitration Court, styled in the notice referred to. hereafter as Manikganj Arbitration Assembly, the accused caused a notice to be issued over his signature to the complainant and thereby committed an offence u/s 506, Indian Penal Code. The notice complained of states that a certain person name given) has laid a claim against the complainant for Rs. 2,499, here follow details of the claim--before the Arbitration Assembly and as recourse to Court would be ruinous to both sides, he is requested to be present on a given date, and arrange for amicable settlement. These words are in point. Then follow the words in manuscript which are said to be the, offending words constituting criminal intimidation. They are " Be it known that if the defendant (meaning the complainant in this case) does not give an answer (or file written statement) on that date the suit will be decreed on that date on plaintiff's {i.e., accused's) proof. Afterwards no objection will be accepted."

10. The accused has obtained this Rule on the ground that the facts proved and found do not legally constitute the offence of criminal intimidation. The Crown does not appear to support the conviction but the Trial Magistrate has submitted a full explanation.

11. It, therefore, remained to be considered if the words in writing quoted above make out the offence of which the accused has been convicted for it is evident that the printed portion of the notice is wholly innocuous.

12. The charge framed is in these words:--"That you...caused a written notice to be served on one Laljhi chaukidar of Gheor and thereby caused him alarm for his property intending thereby to cause him to appear before you on a certain date and place which you had no right to do and which he was not legally bound to obey and thereby committed an offence punishable u/s 506, &c." I think this charge is bad. Section 503, Indian Penal Code, defines criminal intimidation thus:--(I quote so much of the section as is necessary for our present purpose) "whoever threatens another with any injury to his...property...with intent to cause alarm to that person or to

cause that person to do which he is not legally bound to do, as the means of avoiding such threat, commits criminal intimidation."

13. It is clear from this definition that the elements constituting the offence are, first, threat of injury to the property of the complainant and, secondly, the intention to cause alarm, etc.

14. As to the first element, it is said by the learned Additional Sessions Judge who heard the appeal that the expression that if the complainant did not appear on the day fixed an ex parte decree will be passed against him is threat to his property. I am unable to agree in this view. Injury is defined in Section 44, Indian Penal Code, as "denoting any harm whatever illegally caused to any person...in property". Hence the threat must be of causing harm to property. I cannot persuade myself that the threat to pass an ex parte decree for a certain sum by an unauthorised person or body is threat to property. This apparently strained construction of the plain wording of the law is sought to be vindicated by suggesting that the accused or the body to which he belongs might thereafter proceed to touch the complainant's property on the strength of that decree. This is mere conjecture. Had there been any evidence that the accused ever proceeded against another's property under colour of a so-called decree, it might be urged--I do not decide, rightly--that the threat involved subsequent injury to property. The evidence is just the other way for P.W. No. 3, Ch. Mohuili Majumdar, says:--"I have never seen any decree of the Arbitration Court being executed." As I read Section 503, Indian Penal Code, the threat must be a direct threat to cause harm to a person in property and not by way of insinuation of possibility or even probability of such harm.

15. As regards the second ingredient of the offence, the accused is not charged with having the intention to cause alarm to the complainant, nor is there any such finding. The learned Additional Sessions Judge finds that the complainant, a person of ordinary intelligence and education was in fact frightened." This is not enough. The mental condition of the complainant does not determine the offence. It is the mental attitude of the accused or mens rea that ordinarily makes an act criminal. It may be said that the accused intended to cause the complainant to do an act which he was not legally bound to do, viz., to file an answer, but the threat must be to cause injury to property in the event of non-compliance.

16. For all these reasons, I hold that the conviction is bad and must be set aside and the accused acquitted.

On account of this difference of opinion the case was referred to Buckland, J., who delivered the following judgment:

Buckland, J.

17. The petitioner Priyanath Gupta who was convicted by the Sub-Divisional Magistrate, Manikganj, of the offence of criminal intimidation and sentenced to pay

a fine of Rs. 200 or in default to undergo six months" simple imprisonment appealed to the Sessions Judge of Dacca by whom the conviction and sentence were confirmed and has, now obtained a Rule from this Court to show cause why the conviction and sentence should not be set aside. The case has been laid before me under Sections 429/439 of the Code of Criminal Procedure.

18. The complainant is one Lalji Koeri, a Chawkidar. There was served on him by a peon a document in the following terms:

Notice for decision of suit. Before the (body of) Arbitrators at Manikganj, District Dacca.

Rd. U.C. Roy Civil Suit No. 595 of 1,328-29.
P.U.B. Claim laid at Rs. 2,499.
22-5-22

To,

5 Lalji Koeri, father's name not known of Gheor Bazar.... Defendant.

Whereas the plaintiff Gobin Bhar, son of the late Jhiguri Bhar, of Pechar Kan-darhat, Thana Gheor, has brought a suit against you on the allegation that the defendants Nos. 2 to 6 have kept, confined the plaintiff's married, wife, Parbati and the other defendants are in collusion with them, that the plaintiff at the time of his going to Benares had entrusted the defendants with, the charge of his shop and that the defendants have misappropriated many articles of the said shop and has prayed for the recovery of possession of those articles and of his wife under the decision of Salisi Nispatti Mandali (Body of Arbitrators) at Manikganj and whereas if a case be brought in Court in respect of the said matters there is likelihood of a heavy loss being suffered by both the parties, you are hereby informed that you will appear before me at 10 A.M. on Thursday the 11th Jaistha next and make arrangement for an amicable settlement thereof otherwise you will be put to loss for nothing.

Be it mentioned here, that if 1\$ne defend ants do not put in an answer on the afore said date the suit will be decreed oh the evidence of the plaintiff and, no objection will be allowed thereafter.

Manikganj	File	Priyanath Gupta,
Salisi Bichar		President.
Mandal	(Initials)	Salisi Nispatti
Rastriya Samiti	23-6	Mandali.
	On the back.	
	List of property.	

		Rs.
1. Har Magan Bhadai	Cash ..	64
2. Taken by Gabari	■ ..	500

3. On account of ornaments	■	..	30
4. Mangal Karmakar Ghatak	■	..	1,000
5. Gold Mohur I		..	30
6. Gobind Bhar on account of shop	■	..	425
7. Guru Prasad on account of shop	■	..	450

Total Rs.			2,499

19. Portions of this document are in print, the remainder is in manuscript, in particular the last paragraph from the words "Be it mentioned," to "allowed thereafter." The petitioner whose signature it bears is the President of what is known as the Salisi Nispatti Biehar Mandali at Manikganj, and the charge is that by causing it to be served upon the complainant he Committed the offence of which he was convicted.

20. Two points have been argued upon the hearing of the Rule. The first is, that there is no evidence to support the findings of the lower Courts that the last paragraph in manuscript was there when the petitioner signed the notice as to which I am not prepared to hold that there is no evidence to support the inference which the lower Courts have drawn in this respect.

21. The other point which is more substantial is that this notice cannot constitute the offence charged.

22. Excluding immaterial portions of the section criminal intimidation is defined as follows:--"Whoever threatens another with any injury to his person, reputation or property with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do...as the means of avoiding the execution of such threat commits criminal intimidation."

23. That the notice in question conforms in many respects to the forms used by Courts established by law does not admit of dispute. Expressions used are similar, the word "suit" is employed to specify the proceedings before this Tribunal which was self-constituted and had no legal sanction, and the complainant is required to put in an answer which he was not leagally bound to do, as the means of avoiding that "the suit will be decreed on the evidence of the plaintiff" which fulfills the requirements pf the section as regards intent.

24. The question then arises whether that which according to the notice the complainant could so avoid was injury threatened to his person, reputation or property. That a decree of a Civil Court harms an individual against whom it is made in his person, reputation or property is a proposition which was not controverted when I put the question to the learned Vakil for the applicant in the course of

argument and, in my opinion, he rightly accepted it as correct, though it might be more strictly accurate to say that the harm is caused by the probable legal consequences of a decree. Consequently, a threat of a decree is a threat of harm to an individual in his person, reputation or property.

25. But it is submitted that this notice cannot be construed as a threat of such harm as the tribunal was incompetent to execute its decree. That; in my judgment, is immaterial. The section says nothing about the capacity of the person making the threat to carry it into execution. Were such capacity essential the threat implied in the presentation of an unloaded pistol at the head of another would not further the commission of the offence of criminal intimidation unless the act was accompanied by threatening words, which would reduce the section to an absurdity. Nor does the section say anything about the effect upon the person threatened, and whether or not the complainant knew that the notice was innocuous is equally immaterial.

26. Looking at the notice as a whole, the only inference to be drawn is that it was the intention of the petitioner to cause the complainant to think or believe that unless he did what the notice required him to do a decree as ordinarily understood would be passed against him and he would become liable to those penalties which are the sanctions for decrees made by Courts of justice duly constituted by law. No other intention can be attributed to the use of the forms of expression and words employed. The petitioner, therefore, threatened the complainant with harm in his person, reputation or property by threatening him with a decree. u/s 44 of the Indian Penal Code injury denotes harm illegally caused. By no legal process or means could this Tribunal make or give effect to such decree as it was the intention of the notice to cause the complainant to believe would be made if he failed to comply with it. Therefore, in that the petitioner threatened the complainant with such decree he threatened the complainant with harm to be caused illegally.

27. Upon the facts found by the lower Courts I hold that the petitioner committed the offence of criminal intimidation. The conviction and sentence are affirmed, and the Rule is discharged.