

**(1909) 08 CAL CK 0045**

**Calcutta High Court**

**Case No:** None

Projapat Jha and Others

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Aug. 6, 1909

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### **Judgement**

1. This is a rule on the District Magistrate, to show cause why the, sanction to prosecute the petitioners under, Section 188 should not be set aside Firstly, on, the ground that the order u/s 144 was not in accordance with the provisions of Scheduled 5, Form 21, of the Criminal Procedure, Code, and, secondly, on the ground, that the, order sanctioning the prosecution did not show that disobedience caused, or tended to cause obstruction, annoyance or injury or a riot.

2. When we granted this rule we understood that the only order passed u/s 144 ran as follows: "Issue notice through special peon to both parties u/s 141, Criminal Procedure Code, not to go to the disputed land or commit a breach of the peace." Such an order would not be in accordance with the provisions of the, schedule. But on reference to the record we, find that an order has been drawn, up in accordance with the requirements of Form No. 21 of Scheduled 5.

3. It has been urged that this order also is insufficient and reliance has been placed on, the case of Karoo Lal Sajawal v. Shyam Lal 32 C. 935 : 9 C.W.N. 864 : 1 C.L.J. 216 : Cr. L.J. 215. It was held in that case that an order was u/s 144, Criminal Procedure Code, bad, where it did not appear from the proceedings that the Magistrate was of opinion that immediate prevention or speedy remedy was necessary, and the order made did not state the material facts of the case. In the case we have not the proceedings u/s 144 before us. There presumably was a police report or some such document on which the order was passed and if we were to look into the proceedings it is possible enough that we should find that there were sufficient grounds for holding that immediate prevention or speedy remedy was necessary.

4. As to the point that the order made does not state the material facts of the case, it is quite clear from the schedule that the material facts may be stated with the

greatest possible conciseness, and on looking at the order we think that it is perfectly valid under that schedule.

5. But we think that the order must be set aside on the second ground. A Magistrate should not sanction a prosecution u/s 188, unless he thinks that all the elements necessary for a conviction are present. In the judgment of the Magistrate and in the subsequent order of the Sessions Judge, there is nothing to show that either officer ever applied his mind at all to the question whether the disobedience of this order caused or tended to cause annoyance, injury, obstruction or a riot. In the explanation submitted by the Magistrate he has entirely ignored the two grounds on which the rule was issued and has confined himself to discussing other points in the petition with respect to which he was not consulted. We, therefore, derive no assistance from his explanation in dealing with this point. There is nothing to show, as we have stated, that the Magistrate thought that disobedience to his order tended to cause a riot. That being so, we think the sanction is wrong and must be set aside.