

Bhupen Guha Vs Dilip Kumar Bose

Court: Calcutta High Court

Date of Decision: Sept. 16, 1970

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 133, 133(1), 134, 135, 136

Citation: 77 CWN 519 : (1971) 2 ILR (Cal) 1

Hon'ble Judges: N.C. Talukdar, J

Bench: Single Bench

Advocate: Jahar Lal Roy and Ram Chandra Srivastava, for the Appellant; Sudhir Gopal Poddar, Kali Charan Sen and Sudhir Sen Choudhury, J.M. Banerjee, for State and Nalin Chandra Banerjee, Amicus Curice, for the Respondent

Judgement

N.C. Talukder, J.

This Rule is at the instance of the second-party Petitioner against two orders dated June 10, 1970 and June 24, 1970, passed by Sri K. C. Mallick, Magistrate, First Class, Sealdah, district 24-Parganas, in Misc. Petition No. 409 of 1970/M 105/70 u/s 142 of the

Code of Criminal Procedure.

2. The facts leading on to the Rule are short and simple. The first-party, Dilip Kumar Bose, is a resident of 1 Jugipara Lane, Calcutta. The second-

party, Bhupen Guha, is the owner of two small factories, carried on under the name and style Guha & Company at premises Nos. 236/1

Vivekananda Road and 57/6 Raja Dinendra Street for some years. An application u/s 133, Code of Criminal Procedure, was filed by the first-

party before the learned Police Magistrate at Sealdah against the second-party as also his wife Sm. Chhayarani Guha. The learned Police

Magistrate thereupon by his order dated May 13, 1970, directed the officer-in-charge, Beliaghata P.S., to enquire and report by May 27, 1970,

and further directed that in the meanwhile no breach of the peace may take place. The report ultimately arrived and, on a perusal thereof, the

learned Police Magistrate by his order dated May 28, 1970, drew up proceedings against the two members of the second-party u/s 133, Code of

Criminal Procedure, directing them to desist from carrying on the trade or regulate it so that no noise is caused to the discomfort of the residents or

to show cause before Sri K. C. Mallick, Magistrate, First Class, Sealdah, by June 20, 1970. Notices were accordingly issued. On June 10, 1970,

the learned Magistrate went through the application filed by the first-party as also a mass petition filed by one Lakshmi Narayan Chatterjee and

others and also certain affidavits filed on behalf of different persons, and after hearing the lawyer of the applicant and going through the connected

papers, the learned Magistrate was satisfied that there was a chance of the adjoining houses being cracked and damaged due to the hammering

done by the members of the second-party in their factory and in that view he considered that immediate action u/s 142, Code of Criminal

Procedure, was necessary to prevent the imminent danger and accordingly issued an order of injunction against the two members of the second-

party asking them to stop the functioning of the factory forthwith at the aforesaid two premises wherein they have been carrying on the business.

Cause was directed to be shown by them on the date fixed. A prayer thereafter was made on behalf of the second-party for vacating the order

dated June 10, 1970, and on June 15, 1970, the learned Magistrate heard both the sides and ultimately by his order dated June 24, 1970, he

rejected the application filed on behalf of the second-party for vacating the order of injunction passed u/s 142, Code of Criminal Procedure. This

order has been impugned and forms the subject-matter of the present Rule.

3. Mr. Jahar Lai Roy, Advocate (with Mr. Ram Chandra Srivastava, Advocate) appearing in support of the Rule on behalf of the second-party

Petitioner, Bhupen Guha, has made a two-fold submission. Mr. Roy has contended in the first instance that there has been a non-conformance to

the mandatory provision of Section 142 of the Code vitiating the resultant proceedings inasmuch as, amongst others, the learned Magistrate who

passed the order u/s 142 of the Code is not the Magistrate who made the order u/s 133 of the Code. Mr. Roy contended in the second place that

the order dated June 10, 1970, is de hors the conditional order passed by the learned Magistrate u/s 133 of the Code on May 28, 1970, and as

such is bad and repugnant. Mr. Sudhir Gopal Poddar, "Advocate (with Messrs Kali Charan Sen and Sudhir Kumar Sen Choudhury, Advocate),

appearing on behalf of the first party-opposite party, joined issue. Mr. Poddar contended in the first instance that the words "a Magistrate making

an order" used in Section 142 of the Code were not confined to the Magistrate making the order u/s 133 of the Code but to any Magistrate as

otherwise the intention of the Legislature would be unnecessarily circumscribed. Mr. Poddar further submitted that some meaning and effect must

be given to the provision of the Statute as otherwise this dominant intention behind the same cannot be given effect to and the Legislature abhors

redundancy. As to the second contention of Mr. Roy, Mr. Poddar submitted that the abjection taken by him is more technical than real because

there is precious little difference between the conditional order passed on May 28, 1970, and the order of injunction passed u/s 142 of the Code

on June 10, 1970, inasmuch, the latter is included within the former. Mr. J. M. Banerjee, Advocate, appearing on behalf of the State, opposed the

Rule. Mr. Banerjee contended that the objections taken by Mr. Roy to the maintainability of the proceeding are unwarranted and untenable and at

this stage of the proceedings the same should not be quashed for a purported non-conformance to the provision of Section 142 of the Code. In

course of the argument it appeared that there is no direct case on the point as to whether the words "a Magistrate making an order" used in

Section 142(1) of the Code mean "the Magistrate" who had passed the original order u/s 133 of the Code, Mr. J. M. Banerjee, Advocate,

appearing on behalf of the State, submitted that the points appear to be one of first impression and Mr. Poddar also agreed that it was so. Mr. Roy

appearing in support of the Rule also could not cite any decision on the point but merely pinpointed the provisions of Section 142 of the Code in

support of his submission made in this behalf. In view of the importance of the points raised appearing to be one of first impression, the Court

requested Mr. Nalin Chandra Banerjee, a senior member of the Bar, to assist the Court as amicus curia and Mr. Banerjee was good enough to

agree. Mr. Banerjee thereafter made his submission as to the interpretation of Section 142(1) of the Code and the same would be considered in

their proper context.

4. Having heard the learned Advocates, appearing on behalf of the respective parties and on going through the materials on the record, I find that

the first contention raised by Mr. Roy is one of law and of some importance. The point involved is whether the words "a Magistrate" as used in

Section 142(1) of the Code mean "the Magistrate" passing the original order u/s 133 of the Code or any other Magistrate to whom the matter may

be transferred either u/s 133(1) or u/s 192 of the Code of Criminal Procedure. Mr. Roy contended that some meaning and effect must be given to

the words used by the Legislature in the provision of Section 142(1) of the Code and the expression used being "a Magistrate" and not "the

Magistrate", it was clearly intended that an order of injunction can only be passed by the learned Magistrate drawing up the proceedings u/s 133 of

the Code within the bounds of Section 142(1) of the Code. Anything short of that would be long off the mark. Mr. J. M. Banerjee appearing on

behalf of the State submitted in his fairness that the point was not free from doubt and left room for consideration either way. Mr. Poddar

contended that there was no cloud raised and the, same, if any, can easily be lifted if the provisions of Section 142 of the Code are considered

against the back-drop of Section 133 of the Code onwards as incorporated in chap. X of the Code of Criminal Procedure. In this context he also

laid emphasis on the ground of expediency as otherwise a Magistrate drawing up an order u/s 133 of the Code and having mentioned some other

Magistrate in the conditional order itself before whom the cause could be shown, cannot continue to do duty ad infinitum, and if and when exigency

arises in the shape of emergent situation, the learned transferee Magistrate or the Magistrate who was mentioned in the original conditional order

would be helpless. The cardinal principle of interpretation of Statute rules out redundancy. As was observed by Lords Sumner in the case of

Quebec Railway, Light, Heat and Power Company Ltd. v. Vandry AIR 1920 P.C. 181 (186), that effect must be given, if possible, to all the

words used, for the Legislature is deemed not to waste its words or to say anything in vain.

I respectfully agree with the same. It is pertinent now to consider the submission made in this context by the learned amicus curia. Mr. Banerjee

submitted that in order to understand the meaning of the words "a Magistrate" as used in Section 142(1) of the Code, it is necessary to make a

reference to the other provisions of the Statute preceding the same. In this context Mr. Banerjee referred to the provisions of Section 133(1)

wherein the expression used is "to appear before himself or some other Magistrate of the first or second class". Mr. Banerjee submitted that there

is no vagueness and the required appearance may be made either before the learned Magistrate, drawing up the proceeding u/s 133, or before

"other Magistrate" as mentioned therein. The same is the position so far as Sections 134, 135 and 136 of the Code are concerned. The Legislature

in its wisdom has used the expression "to the Magistrate by whom it was made" and therefore the said expression connotes and predicates that the

Magistrate as referred to in the words of Sections 134, 135, 136 and 138 of the Code is "the Magistrate" drawing up the conditional order and

not "any other Magistrate" to whom the case may be transferred. The material words in the aforesaid provisions cannot be overlooked. The

proper way is to give effect to the plain meaning conveyed by the words of the said section. The words used therein being "if a Magistrate making

an order u/s 133", it must mean that it is the Magistrate who passed the conditional order. Mr. Poddar submitted that this would give rise to untold

difficulties and the words of a Statute are not to be interpreted in a manner which would defeat the intention of the Legislature. It is difficult to agree

with the: aid submission because the alternative provision is significant and not be overlooked. In the case of a subsequent application, the other

Magistrate as mentioned in the conditional order u/s 133(1) or the transferee Magistrate u/s 192 of the said Code, is not powerless. To give effect

to the intention of the Legislature recourse may be had to the provisions of Section 520 of the Code. On the principle of a harmonious construction

of the Statute, I accordingly hold that the expression "a Magistrate" within the bounds of Section 142(1) means the transferor Magistrate drawing

up the conditional order and not any other Magistrate who may come by the case subsequently. After all is said and done, orders u/s 133 of the

Code are temporary orders, not vested with immortality in an otherwise mortal world. I accordingly agree with the interpretation given by the

learned amicus curia to the provision of Section 142(1) of the Code as also the contention made in this, behalf by Mr. Roy appearing in support of

the Rule. The first contention raised by Mr. Roy accordingly succeeds.

5. The second point raised by Mr. Roy also stands on a firm ground. Mr. Roy has contended that the order of injunction passed u/s 142(1), Code

of Criminal Procedure, must not run off at a tangent from the original order passed u/s 133 of the said Code.

A reference to the two orders would make it abundantly clear that the second one passed by way of an injunction is not the snail as the order that

was passed by way of conditional order on May 28, 1970. It is pertinent therefore to refer to the first order passed on May 28, 1970, namely, the

conditional order, which runs as follows:

I do hereby draw up a proceeding against the O.P. u/s 133, Cr.P.C, and direct them to desist from carrying on the trade or- regulate it so that no

noise is caused to the discomfort of the residents of the locality due to running the machines and dropping iron plates on the road or to show cause

before Sri K.

C. Mallick, Magistrate, 1st Class, why the order should not be enforced with or without necessary modifications by 20. 6. 70.

Issue notice in form XVI of Schedule V. accordingly.

The order of injunction passed on June 10, 1970, runs as follows:

I am satisfied from the above that there is chance of the adjoining houses being cracked and damaged at the hammering done by the O Ps. in their

factory. Immediate action under t. 142, Cr.P.C, is as such warranted to prevent the imminent danger or injury. Issue injunction against the O. Ps.

asking them to stop the functioning of the factory forthwith at 23/1 Vivekananda Road, Cal. and 57/6 Raja Dinendra Street, Calcutta.

Cause if any may be shown by the O. Ps. on the date fixed. One looks in vain to the latter order to find any provision for regulating the carrying on

of the trade so that no noise is caused and instead there is a direction for stopping the functioning of the factory Lock Stock and Barrel and

forthwith stopping the functioning of the factory cannot by any chance be akin to regulation thereof in a manner directed by the Court drawing up

proceedings u/s 133 of the Code. A reference in this context may be made to the case of Panchanan Mallik and 3 Ors. Vs. R. Chatterjee ,

wherein Sen J. observed that even passing a conditional order u/s 133, the Magistrate limits himself to the checking of a particular nuisance, an

order of injunction u/s 142 must be restricted to the checking of that particular nuisance which has been prohibited by the order u/s 133 and the

Magistrate will be acting without jurisdiction if he goes beyond the scope of the nuisance. Having given my anxious consideration to the matter, I

find that the learned Magistrate has gone beyond his jurisdiction in passing the order of injunction which is not only clearly divergent from the

conditional order passed by him on May 28, 1970, but is also de hors "the Statute. I respectfully agree with the observations made by Sen J. in the

above-mentioned case and I hold that in view of the said non-conformance the resultant order of injunction passed by the learned Magistrate is

clearly bad and repugnant and as such should be quashed. The second contention also of Mr. Roy accordingly succeeds.

6. Before I part with the case, I must place on record my appreciation of the troubles taken by Mr. Banerjee in placing before the Court, the pros

and cons relating to the point raised, which is one of first impression. But for his assistance, it would have been difficult for this Court to go to the

bottom of the case.

7. In the result, I make the Rule absolute, set aside the impugned orders dated June 10, 1970 and June 24, 1970, passed by Sri K. C. Mallick,

Magistrate, 1st Class, Sealdah, District 24-Parganas, in Case No. M.P. 409 of 1970/M 105 of 1970 and I send back the case to the Court

below for being disposed of in accordance with law and expeditiously and in the light of the observations made above, from the stage reached on

May 28, 1970, by some other Magistrate to whom the case is to be assigned by the learned Police Magistrate, Sealdah.

8. The records are to go down as early as possible.