

Bhusan Das Vs Tulsi Ganguli and Others

Court: Calcutta High Court

Date of Decision: Sept. 22, 1983

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 144, 258, 482
Penal Code, 1860 (IPC) â€” Section 188

Hon'ble Judges: Monoj Kumar Mukherjee, J

Bench: Single Bench

Advocate: Joy Gopal Ghosh, for the Appellant; S.P. Taluckdar, for the Respondent

Final Decision: Dismissed

Judgement

Monoj K. Mukherjee, J.

On a petition filed by the petitioner, the learned Sub-Divisional Magistrate, Barasat passed an order of restraint

under S. 144 Cr. P.C. Against the opposite parties in this Rule It having been brought to the notice of the learned Magistrate that the opposite

parties in the Rule. It having been brought to the notice of the learned Magistrate that the opposite parties violated his order on three dates viz.,

13.5.79., 27.5.79 and 3.6.79, the learned Magistrate filed a complaint under S. 188 I.P. C against them in the court of the Judicial Magistrate,

Barasat. After entering appearance in the said case the opposite parties filed an application for their discharge on the ground that the order under

S. 144 Cr P.C. Was not a valid order and as such the prosecution against them under S. 188 I.P. C. Was not maintainable. The learned

Magistrate allowed the said application by his order dated 25. 1.82 and stopped the proceeding under S. 258 Cr. P.C. Aggrieved thereby the

petitioner has filed the present application.

2. Mr. Ghosh, learned Advocate appearing for the petitioner raised two points in support of the Rule. He first contended that since the case under

S. 188 I P C was instituted upon a complaint, the learned Judicial Magistrate could not have invoked S. 258 Cr. P C and stopped the proceeding.

He next contended that the learned. Magistrate erred in law in sitting in judgment over the validity and legality of the order under S. 144 Cr. P. C,

3. So far as the first contention of Mr. Ghosh is concerned I am in agreement with him that the learned Magistrate was not legally justified to

invoke S. 258 of stop the proceeding as the case was instituted upon complaint. But then sitting in this revisional jurisdiction and while exercising

powers under S. 482 Cr. P.C. The proceeding may be quashed if I find that the second contention of Mr. Ghosh cannot be sustained.

4. In support of his contention that in a proceeding under S. 188 I.P. C. the legality and validity of an order under S. 144 Cr. P.C. Cannot be

challenged. Mr. Ghosh relied upon a judgment of a learned Judge of this court in the case of the King v Darbarilal Shaw, reported in AIR 1949

Cal. 677 wherein it was observed as under:

It is not open to the Court trying an accused person for disobedience of an order under S. 144 Cr. P.C. To decide whether he would have passed

such an order in the circumstance of the case. He has to take the order as good and valid order unless it is shown that the order was a nullity by

reason of the fact that the Magistrate had no jurisdiction or by reason of some other similar circumstances. He is not to superimpose his view on

the propriety of the order.

5. The above observation made in the judgment came up for consideration in a later decision of this Court in the case of Bachuram Kar and Others

Vs. The State, which explained the said observation and thereafter observed that it was open to a person, charged with disobedience to an order

promulgated by a public servant lawfully empowered to promulgate such order, to plead in defense that the order though made with jurisdiction

was utterly wrong or improper on the merits. It was further observed that the accused persons could not be precluded from pleading the

worthlessness of the order in question on the merits although a Court trying a charge would proceed on the footing that the order if made with

jurisdiction was prima facie a good and valid order but that position was liable to be challenged by the accused in his defense and could not be

held to be sacrosanct.

6. Judged in the light of the above judgment it must be held that the impugned order was patently bad in law.

7. Initially the order of restraint was passed on 21.3.79 but after hearing the parties the learned Magistrate dropped the proceeding on 16.4.1979.

Thereafter the learned Magistrate passed an order on 27.4.79 starting the proceeding afresh without recording a proper satisfaction and without

complying with the requirements of S. 144(1) Cr. P.C. Surprisingly again, on 11.6.79 the self same learned Magistrate held that the order he

passed earlier on 27.4.79 was illegal and accordingly he again dropped the proceeding. As already indicated the opposite party violated the order

on three occasions and those occasions were during the period from 27.4.79 to 11.6.79. On the own showing of the learned Magistrate his order

dated 27.4.79 was an illegal order and consequently the learned. Magistrate could not have filed a complaint against the opposite parties for

violation of his illegal order. That apart, as already discussed above, the order-dated 27.4.79 is bad for non-compliance with the provisions of S

.144 (1) Cr. P. C.

8. For the foregoing discussions the application of the petitioner is rejected. The Rule is, accordingly, discharged.