

(1967) 09 CAL CK 0016**Calcutta High Court****Case No:** Criminal Revision No. 605 of 1967

Rabindra Kumar Mitra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Sept. 7, 1967**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 107, 114, 144, 145

Citation: (1968) 2 ILR (Cal) 152**Hon'ble Judges:** Das, J**Bench:** Single Bench**Advocate:** Chittatosh Mookherjee and Sibdas Ghosal, for the Appellant; Dipak Kumar Sen Gupta and Sk. Abu Sufian, for the Respondent**Judgement**

Das, J.

Criminal Rules Nos. 604 and 605 of 1967 are heard together and disposed of by this order.

2. In both the Rules, the order dated July 15, 1967, initiating the proceedings is the same and it purports to (i) restrain the Petitioner-second party and also everybody else except the first party from going on the disputed land and evicting or threatening to evict the first party, (ii) direct the Petitioners to show cause u/s 107 of the Code of Criminal Procedure why they shall not be asked to execute bonds for Rs. 2,000 each, and (iii) issued warrant of arrest against the Petitioners u/s 114 of the Code of Criminal Procedure.

3. The first party made a complaint to the officer-in-charge, Hasnabad Police Station, on June 19, 1967, with forwarding memo, from the Secretary, Hasnabad-Hingalganj Anchalik Committee of the Communist Party of India wherein the said Secretary stated that he was sending the petition "in connection of the illegal eviction which is also a question of law and order", and further stating that "I hope you will (?) kind enough to depend (?) the poor bargadar in any way, as required". An assistant

sub-inspector gave a report that the owner of the land was illegally evicting the bargadar and that there was an apprehension of breach of the peace. The officer-in-charge of the Police station recommended promulgation of an order u/s 144 of the Code of Criminal Procedure and also action u/s 107 of the Code of Criminal Procedure. The first order passed by the learned Magistrate on receipt of the report is dated July 15, 1967, in two separate records in identical language, the summary of which I have given in the opening lines of this order.

4. Proceedings, however, were drawn up u/s 144 of the Code of Criminal Procedure in Case No. 246 and u/s 107 of the Code of Criminal Procedure in Case No. 249. On July 21, 1967, two Rules were issued by this Court and execution of the order of arrest was stayed. On July 22, 1967, the learned Magistrate was apprised of the issue of the Rules by this Court and the learned Magistrate stayed execution of the warrant of arrest. Thereafter, on August 14, 1967, first party filed a petition before the learned Magistrate in the case u/s 144 of the Code of Criminal Procedure, that he had completed the ploughing and transplantation and that there was no longer any apprehension of breach of the peace. The learned Magistrate recorded it and immediately rescinded the order u/s 144 of the Code of Criminal Procedure as there was no apprehension of the breach of the peace. The proceeding u/s 107 of the Code of Criminal Procedure and the ex parte order for arrest of the second party u/s 114 of the Code of Criminal Procedure, however, continued.

5. Rule 604 is directed against the order u/s 144, Code of Criminal Procedure. This order has been rescinded by the Magistrate after issue of the Rule by this Court and this Rule has, therefore, become infructuous. The reception, however, of the complaint at the thana with a forwarding letter from a political party calling for immediate action, the Police report recommending a double proceeding under Sections 144 and 107, Code of Criminal Procedure, the immediate compliance by the Magistrate which included an aggressive order for arrest u/s 114, Code of Criminal Procedure, and then rescinding the proceeding u/s 144 after this Court issued a Rule, calls for scrutiny to ensure the high traditions of independence and fair play maintained by the Judiciary in this country.

6. The petition was received at the thana on June 19, 1967, as appears from the dated seal of the thana, but the forwarding letter from the Secretary of the Communist Party was received at the same thana on June 20, 1967, which also appears from the dated seal of the thana. The forwarding letter speaks of sending the complaint with the forwarding letter which means that the forwarding letter and the petition of complaint travelled together to the thana. The two different dates on the forwarding letter and the complaint to the Police have not been explained. I wonder, if the thana officer on receipt of the complaint forwarded it to the local office of the Communist Party before taking action. For that alone can explain why the two papers, purported to be sent together, bear different dates, namely, the complaint was received at the thana on June 19, 1967, while the

forwarding letter from the Secretary was received on June 20, 1967, though this forwarding letter purports to send the complaint to the Police along with the letter. I am not prepared to think that Police administration has gone so low, as to get order from the political party, but it calls for scrutiny from those responsible for maintenance of law and order and Police administration.

7. What happened at the Magistrate's end is no less distressing. An obliging Magistrate not only immediately drew up proceedings under Sections 144 and 107, Code of Criminal Procedure, but he passed an order for immediate arrest of the opposite parties u/s 114, Code of Criminal Procedure, without scrutiny and without apparently being satisfied that public peace could not be maintained without their immediate arrest. The learned Advocate for the first party does not dispute that the persons directed to be arrested are brothers, one of them a petty shop-keeper and the other a public servant employed in the Railways. After this Court grants a Rule at the instance of the second party and stays operation of the order of arrest, the first party files an application in the Section 144, Code of Criminal Procedure case that he has completed ploughing and transplantations and that there is no longer any apprehension of breach of the peace. Hurriedly the learned Magistrate passes an order rescinding the proceeding u/s 144, Code of Criminal Procedure, without waiting for a Police report or even hearing the second party. Did he act on being genuinely satisfied that there was an apprehension of the breach of the peace? Did he again rescind the order on being satisfied that the apprehension disappeared or did he pass simultaneous order u/s 144, 107 and for arrest u/s 114, to give cover to the first party coming with the blessings of a political party for ploughing and transplanting and as soon as he reports" completion, the proceeding u/s 144 is rescinded. Section 144, Code of Criminal Procedure, is not intended to give undue advantage to one of the contending parties against the other and where there is a dispute over possession of land, the proper section is 145, Code of Criminal Procedure, which provides for attachment of the land and appointment of a Receiver.

8. The learned Magistrate's handling of the proceedings u/s 107 and the order u/s 114, Code of Criminal Procedure, are still more curious and support the misgiving that the learned Magistrate failed to apply his judicial discretion but danced to the tune of the first party. The two proceedings were drawn up on the same complaint and Police report and the orders were the same, word for word. The Magistrate is satisfied on the first party's report in the Section 114, Code of Criminal Procedure case that there was no apprehension of breach of the peace and, therefore, rescinded the proceeding u/s 144, Code of Criminal Procedure. He, however, allows the proceeding u/s 107, Code of Criminal Procedure, to continue and does not cancel the order for arrest u/s 114, Code of Criminal Procedure. How could he continue the proceeding u/s 107 and the order for arrest after he was satisfied that there was no apprehension of breach of the peace? Was it because the first party was yet to reap the full benefit of the cover given by him and did not, therefore, file

a similar petition in the Section 107, Code of Criminal Procedure case? It is difficult to throw out the argument that the first party ploughed and transplanted under the protecting wing of the Magistrate and now wanted to reap paddy by continuance of the order u/s 107, Code of Criminal Procedure, and the threat of arrest u/s 114, Code of Criminal Procedure, even though there was no apprehension of breach of the peace. In either case, the order is a gross misuse of the Magistrate's power under the Code and, if this was done under external pressure, it calls for censure on the Magistrate.

9. Political parties or their office bearers may be important in their own spheres, but any interference by them either directly or even remotely in the administration of justice strikes at the root of judicial independence and the Subordinate Judiciary must be alert against any encroachment on that independence, or else may lose its cherished treasure, the confidence of the people.

10. The Rule in Criminal Revision Case No. 604 of 1967 has, therefore, become infructuous and it is discharged, while the Rule in Criminal Revision Case No. 605 of 1967 is made absolute and the learned Magistrate's order directing the Petitioners to show cause why they should not give bonds and also the order for arrest are set aside.