

(1903) 08 CAL CK 0012

Calcutta High Court

Case No: Rev. No. 727 of 1903

Isab Mondal and Others

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision: Aug. 21, 1903

Judgement

1. This is a Rule calling upon the Magistrate of the district to show cause why the three orders complained of, namely, those of the 19th June, 17th July and 23rd July 1903, should not be set aside on the ground that they were made without jurisdiction. No one appears to show cause; but the learned Magistrate has submitted an explanation in which he says that, "the order of the 19th June was made under sec. 144 of the Code of Criminal Procedure as it was considered necessary to issue the order by reason of the Petitioners attempting to take away unripe paddy without paying any rent to the Government farmer, and he adds (to quote the learned Magistrate's own words) "after this the Petitioners attempted to take away the unripe paddy without paying any rent to the Government farmer ; and it became necessary to safeguard the interests of the Government and of the farmer to prevent their doing so. They were not interfered with in any way; they were told that Government had taken possession of the land as a khas mehal and they were bound to pay rent to Government or to the farmer, and if they did so they would remain in possession of the land. Instead however of doing so or of filing any objection before the Collector they attempted to take away the unripe paddy and it was therefore considered necessary to issue the order under sec. 144, Cr. P. C."

2. With reference to the order of the 17th July 1903, the explanation is in these terms :--"The order of the 17th July directing third persons to have the crops reaped and kept in their custody was passed in the interests of all the parties ; and to a certain extent on the suggestion of the Petitioner; or some of the other raiyats who have paddy growing on the land. It was represented to me that the paddy would be submerged by a certain rise of the river and I passed an order that it should be cut and kept in the custody of two disinterested persons, one of these persons was in fact nominated by the mukhtear who appeared for the raiyats and for their former

landlord Mr. Rice."

3. After hearing the learned vakil for the Petitioner and taking into consideration the explanation submitted by the Magistrate, the conclusion we come to is, that the orders complained of were made without jurisdiction. The order of the 19th June is in these words: "Whereas it appears that a new chur has been formed in the river Ganges and has been taken possession of on behalf of Government, and has been settled with Mahammad Ishaq Chowdhury : and whereas certain persons who have grown paddy on the land have combined together to evade payment of rent to the Government farmer and to take away the paddy by force without payment of any rent: and whereas some of these men are attempting to take away paddy grown by them and there is every likelihood of a breach of the peace and of the free-interest of the Government and the farmer, I hereby under sec. 144, C. P. C., direct that the raiyats who have grown paddy on the land will not take it away without paying rent to the Government farmer."

4. The order of the 17th July runs thus : "The Ijardar is not prepared to-day and has asked for a postponement till Monday. It is necessary however that the dhan should be cut and kept in charge of some respectable persons as it might otherwise get submerged and damaged. Let purwanas issue to Dost Mahamad Biswas of Panka and Jiaruddin Mondal of Narainpur through the Sub-Inspector of Shibgunge directing them to have the paddy cut and to keep it in their custody pending further orders."

5. The order of the 23rd July following is in these words : "Neither the Petitioner nor their mukhtear appeared when called. I have already passed an order that the dhan should be cut and kept by responsible third parties. Order should be issued to them to see that the dhan is cut and stored before the river rises and submerges it and to the Police of Shibgunge to help the third parties to do so."

6. It is clear from the terms and tenour of these orders, and from the explanation submitted by the Magistrate, that the object of the orders was to prevent the raiyats who have grown the paddy from reaping the crops they have sown, with a view to insure speedy payment of rent which is claimed to be due from them to Government or the Government farmer. Whether the rent is really due to Government or the Government farmer is a question which the Criminal Court had no jurisdiction to determine. There is some mention of a likelihood of a breach of the peace in the order of the 19th June, but unless the officers of Government or the Government farmer resisted the raiyats in their attempt to reap the crops they had sown, we do not see how there could possibly be any breach of the peace. Nor does the Magistrate refer to any likelihood of a breach of the peace in the explanation submitted by him. In the learned Magistrate's explanation some reference is made to the paddy being unripe and the raiyats being bent upon removing the unripe paddy with a view to evade payment of rent, and it was to prevent them from doing so, that the order of the 19th June was passed. Then we find that on the 17th July the

Magistrate himself saw the necessity of having the paddy cut to prevent the crop being damaged by a rise in the river. So that after all it could not very well have been that the raiyats were trying to remove the paddy with any undue haste. But be that as it may, the question for our consideration is whether the orders made are within the scope of sec. 144 of the Code of Criminal Procedure, or were altogether outside the scope of that section and were made without jurisdiction for, if they come within the scope of the section and the Magistrate had jurisdiction to make the orders, it would not be open to us as a Court of Revision, having regard to the provisions of sub-sec. (3) of sec. 435 of the Code of Criminal Procedure to consider their propriety. Notwithstanding the comprehensive language of sec. 144, sub-sec. (1), we are clearly of opinion that that section was never intended to cover a case like the present, where the Magistrate of the District has exercised his power as a Magistrate in making an order for the protection of the supposed pecuniary interests of Government or the Government farmer by directing the Petitioners who are cultivating raiyats to refrain from reaping the crops they have sown, unless they paid the rents claimed to be due from them. If that was the kind of injury for the prevention of which sec. 144 was enacted, it will have to be applied in favour of every landlord claiming rent from his tenant, where the tenants attempts to cut his own crops without paying the rent due. For the prevention of an injury like this there are other modes which the law provides, such as by the institution of suits and attachment before judgment, or by the distraint of crops; but it could never have been intended that the exceptional procedure prescribed by sec. 144 of the Code of Criminal Procedure should be sought to be availed of in a matter like this. The orders complained of were clearly made without jurisdiction and must therefore be set aside. The paddy, if any, that has already been cut and is in the custody of third persons, should be ordered to be made over to the raiyats who cultivated the same.