Jagabandhu Misra Vs Manager, India Jute Mills, Serampur

None

Court: Calcutta High Court

Date of Decision: Aug. 15, 1935

Citation: 161 Ind. Cas. 338

Hon'ble Judges: Lodge, J; Guha, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. This is a reference u/s 438 of the Code of Criminal Procedure, made by the learned District Magistrate of Hooghly, recommending that an order

passed by the Deputy Magistrate, of Serampur, u/s 147 of the Code of Criminal Procedure, be set aside for reasons stated by the learned District

Magistrate in his Letter of Reference to this Court.

2. Three different grounds have been stated in the Letter of Reference, on which the order passed by the Deputy Magistrate could be set aside.

The first of these grounds was that in the case before us, it was not possible to hold that there was any apprehension of a danger of a breach of the

peace, justifying a proceeding Tinder Section 147 of the Criminal Procedure Code. It is necessary in this connection to refer to the finding arrived

at by the Deputy Magistrate on the materials before him. According to the Deputy Magistrate, it was clear that there was a dispute regarding the

alleged right of user of a pathway over a strip of land, in possession of the 2nd party, leading to the bedi of the deity Shiva in possession of the 1st

party; it was natural for the 1st party to do his best to change the state of things now brought about by the act of the 2nd party in closing up the

passage to the bedi; to this end he may enlist the sympathy of the inflammable Hindu mill hands and try to force his way to the bedi; the second

party who had closed the passage would resist the attempts of the first party or his sympathisers to enter the place. The consequence of. this is a

serious breach of the peace. The Deputy Magistrate"s conclusions as set out above do not, in our judgment, satisfy the requirements of Section

147 Criminal Procedure Code as for the purpose of initiation of a proceeding under that provision of law, the Magistrate concerned must be

satisfied that a dispute likely to cause a breach of the peace exists. If there was no present danger of a breach of the peace, the fact that there was

a dispute between the parties which was likely to cause a breach of the peace in the future, will not justify a Magistrate taking action u/s 147 of the

Code. There should be a present dispute, and a present fear of disturbance; and the section will not apply to a state of things indicating that there

may be a breach of the peace in future. (See in this connection Uma Charan Santra v. Beni Madhav Roy 7 C L R 352, Janu Majhi v. Maniruddin

8 C W N 590. Hari Charan De Vs. Sherali Talukdar, . On the above ground alone: that the materials on the record do not show that there was

not any present danger of a breach of the peace, justifying the initiation of a proceeding u/s 147, Criminal Procedure Code, the reference made by

the District Magistrate has to be accepted; and it is not, therefore, necessary to consider the other reasons given by the District Magistrate in

support of the reference made by him u/s 438, Criminal Procedure Code.

3. The reference is accepted, and the order of the Deputy Magistrate of Serampur passed on May 4, 1935, u/s 147, Criminal Procedure Code, in

favour of the first party is set aside. In accepting the Reference, we desire to state that it is expected that the parties to the present proceeding,

specially the Manager, India Jute Mills, Serampur, the second party to the proceeding will not in future do any act which might lead to the initiation

of a proceeding u/s 147, justifiable under the law.