
Anadilal Mukherji Vs Sukhchand Mandal

Criminal Revision No. 788 of 1929

Court: Calcutta High Court

Date of Decision: May 9, 1930

Judgement

Costello, J.

This is an application u/s 439 of the Code of Criminal Procedure in respect of an order made by the Subdivisional Magistrate

of Satkhira on the 22nd December, 1928, under the provisions of Section 145 of that Code. The proceedings, which eventually resulted in making

that order, were protracted to a most remarkable extent. For it appears that the proceedings, out of which the order finally emerged, began by a

report made by the police to the magistrate in question on the 18th January of the year 1926, when he reported that there was a likelihood of

trouble between the contending parties who were disputing possession to a certain plot of land. Actually before that date, some of the parties had

been brought before a court for the purpose of being bound over under the terms of Section 107 of the Code of Criminal Procedure. These

proceedings ultimately terminated; but apparently nothing more was done in respect of the proceedings u/s 145 until the 9th June, 1926 when they

were dropped and fresh proceedings, with amended boundaries with regard to the properties, were drawn up on the 27th July, 1926, and the

lands in dispute were then attached. The matter, as I have said, dragged on from that date until December 1928. The real question which we have

to decide is, whether or not the learned magistrate was right in drawing up proceedings in July, 1926, which purported to be based on the police

report of January, 1926, and upon nothing else.

2. It has been urged before us that it cannot rightly be said that in July, 1926, there was a likelihood of a breach of the peace between the

contesting parties by reason of the situation as it had previously existed in January, 1926. We are not concerned with the question of the

subsequent delay as between July, 1926, and December, 1928. But one cannot help remarking in passing that this proceeding seems to have taken

a course which never could have been contemplated by the terms of Section 145, which, after all, are designed to secure that a status quo should

be preserved and a breach of the peace prevented as between the two disputing parties or sets of disputing parties pending the time one side or

the other should have recourse to a civil court, in order that their rights with regard to the land might be finally determined. It is to be borne in mind

that by Section 145, Sub-section (1), the magistrate of the class, therein referred to, is to make an order in writing if he is satisfied that a dispute

likely to cause a breach of the peace exists, concerning any land or water or the boundaries thereof. The condition precedent for making an order

of the kind contemplated is that a breach of the peace is likely. The meaning of the word "likely" has been considered in a number of reported

cases and on the whole the decisions indicate, I think, that the word "likely" indicates some degree of futurity, though it has been said that the word

"likely" does not mean imminent or immediately to happen. We may take it for the purpose of this section that the word "likely" is to be treated as if

it is synonymous with the word "probable." In the present instance, the police reported, as far back as January, 1926, that a breach of the peace

was then likely or anticipated, if no steps were taken and the matter was recorded by the magistrate as one of emergency,--in other words it was

considered in January, 1926, that the matter was urgent. So that the position was that, in January, 1926, a dispute likely to cause a breach of the

peace existed. I use the word "existed" advisedly, because the word in the section is "exists." That means that there must be a dispute in existence

which is likely to cause a breach of the peace at the time when the order is made. Now there is nothing to show that the state of affairs which

existed in January, 1926, still existed in July, 1926, so far as it appears from the order which the magistrate made some two years later. We,

therefore, think, from the actual wording of the section itself that the making of an order, some months after the report on which it was purported to

be passed, cannot be supported. There are authorities for that view in cases, which unfortunately we have not had the advantage of seeing,

because the reports in which they appear are not available. Apparently it was held in *Re: Nallanna Goundan* 2 Cr.L. Rev. 85., which is cited in

Aiyar's Book of Code of Criminal Procedure, that if the circumstance was that there was danger in the past, proceedings based on a likelihood of

a breach of the peace six months previous to the date of the preliminary order would be illegal. There is also another case, *Chhedilal Marwari v.*

Mahabir Prasad Sukul (1921) 2 Pat.L.T. 650 : 64 Ind. Cas. 507., where it appears to have been decided that proceedings cannot be started on

the basis of a police report more than three months old, there being no likelihood of a breach of the peace, when the magistrate actually drew up

the proceedings. Now that seems to me to be a reasonable interpretation to be put upon the terms of the section. It is necessary for making an

order of this description that the magistrate should be satisfied at the time of drawing up the proceedings that there is then existing a likelihood of

breach of the peace arising from the disputes between the parties with regard to the land in question.

3. Taking that view of the matter, we think that this order of the magistrate must be set aside. That will be without prejudice to the making of any

fresh order, if this or any other magistrate is satisfied that there is a likelihood of any breach of the peace existing at the time when the matter comes

before him. The Rule is made absolute in these terms.

Suhrawardy, J.

4. I agree.