

(2006) 08 CAL CK 0049

Calcutta High Court

Case No: C.R.R. No. 1312 of 2005

Subhas Chandra Dutta

APPELLANT

Vs

Sudha Das and Others

RESPONDENT

Date of Decision: Aug. 4, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 144, 144(1), 144(2)
- Penal Code, 1860 (IPC) - Section 188

Citation: (2007) 2 CHN 85**Hon'ble Judges:** Ashim Kumar Roy, J**Bench:** Single Bench**Advocate:** Arup Chatterjee, for the Appellant; Ravi Sankar Chatterjee, for the Respondent**Final Decision:** Dismissed

Judgement

Ashim Kumar Roy, J.

This is a criminal revision against an order passed by the learned Executive Magistrate, Katwa, refusing to file a complaint u/s 188 of the Indian Penal Code against the opposite party Nos. 1 to 7 for alleged disobedience of an order passed u/s 144 of the Code of Criminal Procedure.

2. The order of the learned Magistrate passed u/s 144 of the Code of Criminal Procedure, allegedly disobeyed, is quoted hereunder:

From the petitions, submission of learned Advocate and order of Hon"ble High Court it appears that the petitioner is apprehending breach of peace and tranquillity over the possession of the disputed plot. Learned Advocate for opposite party also claims possession of the disputed plot. Claims and counter claims over possession of the disputed plot may lead to breach of peace and tranquillity.

Hence, ordered that the opposite parties are not to disturb the peaceful possession of the petitioner as determined by the B.L. & L.R.O., Mangalkote of the disputed

plots. A copy of the order be given to C.I. Katwa, SDPO, Katwa, O.C. Mangalkote, petitioner and opposite parties for compliance. To 12.12.02.

3. Heard Mr. Arup Chatterjee appearing on behalf of the petitioner and Mr. Ravi Shankar Chatterjee appearing on behalf of the State. None appeared on behalf of the opposite party Nos. 1 to 7. The affidavit of service filed in Court be kept with the record.

4. The only question arose in this criminal revisional application for decision of this Hon'ble High Court is whether the order of the learned Judicial Magistrate refusing to lodge complaint u/s 188 of the Indian Penal Code suffers from any illegality or not.

5. This Hon'ble High Court in the case of Nilima Bhattacharya v. State reported in 1984(2) CHN 143, a few decades back held that unless the order passed by a Court in exercise of power conferred upon it u/s 144 of the Code of Criminal Procedure, is a valid order in the eye of law, no offence punishable u/s 188 of the Indian Penal Code can be said to have been made out upon an alleged violation of such order.

6. In my view, no order passed in exercise of power conferred u/s 144(1) of the Code of Criminal Procedure or an ex parte order u/s 144(2) of the Code of Criminal Procedure directing any person to abstain from doing certain act or to take certain order with respect to certain property in his possession or under his management, can said to be a lawful order, unless:

(i) The Court while passing such order draws up a proceeding u/s 144 of the Code of Criminal Procedure.

(ii) The Court in its order set out the material facts of the case and thereupon forms an opinion that a direction in exercise of its power u/s 144, is likely to prevent obstruction, annoyance or injury to any person lawfully employed.

(iii) The Court is of further opinion that there is an apprehension of serious breach of peace and to avoid the same immediate prevention or speedy remedy is desirable by passing a restrained order in terms of Section 144 of the Code of Criminal Procedure.

7. I have carefully perused the order u/s 144 of the Code of Criminal Procedure, annexed with this revisional application for alleged violation whereof the petitioner moved the learned Court for making a complaint u/s 188 of the Indian Penal Code. I found while passing such order the learned Magistrate completely disregarded basic legal requirements and the said order is wholly illegal and without jurisdiction. In my opinion, since the order allegedly disobeyed, being by itself is illegal and without jurisdiction, no offence u/s 188 of the Indian Penal Code can be said to have been committed in violation thereof.

8. Hence, the instant criminal revisional application having no merit stands dismissed.

9. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.