

(1978) 08 CAL CK 0028**Calcutta High Court****Case No:** None

Pranab Kumar Mukherjee and
Others

APPELLANT**Vs**

Yusuf Ali Bhar and Others

RESPONDENT**Date of Decision:** Aug. 16, 1978**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 146, 397, 482

Citation: (1979) CriLJ 95**Hon'ble Judges:** B.N. Maitra, J**Bench:** Single Bench**Judgement****@JUDGMENTTAG-ORDER**

B.N. Maitra, J.

Pursuant to an order of the Division Bench of this Court passed on 18-12-1974, a proceeding u/s 145 of the Criminal Procedure Code was drawn up with regard to plots Nos. 63 and 234. In the Title Suit No. 23 of 1963 pending in the court of the 1st Subordinate Judge, Alipore, Shri Pranab Kumar Mukherjee and Shri Dilip Kumar Mukherjee were appointed Receivers in respect of the disputed tank fisheries, which are locally known as Kankarasuti, Sonatala, Jhorokhali and Bantra. On 28-12-1977, the learned Magistrate perused the petition submitted by Pranab Kumar Mukherjee, and fixed 29-12-1977 as the next date stating that the petition be sent, to the Officer-in-Charge, Barasat, for investigation and report and necessary action by that date. On 29th December last, he stated that in view of a lot of disturbances of public tranquillity, which had arisen basically due to Shri Pranab Kumar Mukherjee being Receiver of his own property, he discharged him from that post and appointed J.L.R.O. to act as Receiver until further orders. Against that order, the present rule was obtained.

2. It has been contended on behalf of the applicants that in view of the Section 146(2) of the Criminal Procedure Code, the order passed by the learned Magistrate is without jurisdiction because joint Receivers in respect of the disputed property had already been appointed by the civil court. That order was confirmed by the High Court and hence, the order is without jurisdiction.

3. It has been contended on behalf of the State O.P. that the present revision is not maintainable in view of sub-section (2) of Section 397 of the Criminal Procedure Code because it is a mere interlocutory order. After the final order is passed, the same can be challenged in this Court. So, the present application is premature. It has been further stated that the learned Magistrate did not prevent Shri Pranab Kumar Mukherjee from acting as Receiver. It was merely directed that he would not go to the plot No. 63 and in fact that is the implication of the order in question. Further Section 146(2) of the Code does not apply where one of the warring parties is the Receiver. Here the centre of dispute is regarding Shri Pranab Kumar Mukherjee, who was appointed Receiver in respect of his own property, and hence the trouble. This is a case of emergency covered by the provisions of sub-section (1) of Section 146 of the Criminal Procedure Code. Hence, the order passed by the learned Magistrate is perfectly justified. The other opposite parties supported this contention and stated that in view of the facts of this case and specially because of the emergency, a correct order was passed by the learned Magistrate and the same cannot be set aside by this Court.

4. Of course, the learned Standing Counsel appearing on behalf of the State referred to the decision of Mr. Justice Chandrachud in the case of Kurukshetra University and Another Vs. State of Haryana and Another, to show that the inherent power envisaged by Section 482 of the Code should not be exercised arbitrarily but it should be invoked sparingly, in rarest of rare cases with circumspection. Now, that case related to quashing an P. I. R. and it was stated that High Court could not, in exercise of the power conferred by Section 482 of the Code, quash the F.I.R. So that case is clearly distinguished.

5. The case of Madhu Limaye Vs. The State of Maharashtra, may be referred to show that Mr. Justice Untwalia has stated that a harmonious construction is necessary between the revisional powers u/s 397(2) and Section 482 of the Code. The relevant portion of Section 482 says, "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary...to secure the ends of justice". Such expression "nothing in this Code" includes Section 397 as well. So, in a fit case, the High Court can exercise its inherent power u/s 482, even though revision is not permitted u/s 397(2) and High Court can quash an interlocutory order.

6. Let us apply the principles of that case to the present one.

7. It has already been indicated in this case that the civil court appointed applicants joint Receivers. Section 146(2) of the Criminal Procedure Code shows that when the Magistrate attaches the subject of dispute, he may, if no Receiver has been appointed by any civil court, make such arrangement as he " considers proper for looking after the property. Here, the joint Receivers appointed by the Civil Court and by the present Magistrate's predecessor were already holding the post of Receiver. Hence, the learned Magistrate went out of the way in appointing the J.L.R.O. Receiver by discharging Shri Pranab Kumar Mukherjee and Sri Dilip Kumar Mookerjee from that post. So, such order is illegal and without jurisdiction.

8. Sub-section (2) of Section 146 of the Code nowhere says that one of the warring parties cannot be appointed Receiver. The clear order is that Pranab Kumar Mukherjee was discharged from the post of Receiver. So, the contention advanced on behalf of the State, that Sri Pranab Kumar Mookerjee was merely prevented from going to the plot No. 63, is not acceptable. The learned Magistrate clearly contravened the provisions of law embodied in Sub-section (2) of Section 146 by appointing a new Receiver where the Civil Court had already appointed joint Receivers. Such illegal order cannot be upheld on the ground of the alleged emergency. It is thus a fit case where the exercise of the inherent powers of the High Court is called for to set at naught such illegal interlocutory order. Hence the submissions made on behalf of the opposite parties cannot be sustained.

9. The Rule is, therefore, made absolute and the order in question quashed.

10. Send down the records to the court of the Magistrate quickly.