
(1873) 03 CAL CK 0004

Calcutta High Court

Case No: Miscellaneous Case No. 4 of 1873

In Re: Kashichunder
Doss

APPELLANT

Vs

RESPONDENT

Date of Decision: March 19, 1873

Judgement

Sir Richard Couch, Kt. C.J.

1. The petitioner, Kashichunder Doss, was required to enter into a bond in the sum of Rs. 500 to keep the peace for the period of one year at the instance of Hurkishore Doss. It appears that the premises of the two adjoin. Kashichunder wishes to build a side wall of a building upon his own ground, and Hurkishore objects to his so doing, because he anticipates that the dripping from the roof of the building, when completed, will fall on the thatch of his house. It is not alleged that Kashichunder is encroaching on Hurkishore's land. The Deputy Magistrate appears to think that the raising of the wall by Kashichunder may occasion a breach of the peace, but if such a breach of the peace were probable, Hurkishore would be the party to blame and the wrong-doer, as he is not authorized to interfere with Kashichunder's lawful use of his own property. It is true that s. 282 of Act XXV of 1861 vests magisterial officers with larger powers of interference in any matter where a breach of the peace is considered by them likely to occur, but great discretion is required in the exercise of those powers. The effect of the Deputy Magistrate's order is to prevent Kashichunder from building this wall at all, for, if, after the termination of the year, Kashichunder attempts to raise the wall, his neighbour will represent his so doing as an act that may probably occasion a breach of the peace, and will obtain a fresh order for security. To avoid such a consequence as this, we must construe the words "or to do any act that may probably occasion a breach of the peace" as meaning a wrongful act and not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his rights of property, because another person would be likely to commit a breach of the peace if he did so. We think that the order of the Deputy Magistrate should be quashed and the bond be cancelled.

(1) Act XXV of 1861, s. 282.--"It shall be lawful for the Magistrate of the district or other officer exercising the powers of a Magistrate whenever he shall receive credible information that say person, whether a European British subject or not, is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, to summon such person, to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace with or without sureties, as the Magistrate shall think It."

Act X of 1872, s. 491--"Whenever a Magistrate of a division of a district, or a Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any act which may probably occasion a breach of the peace, he may summon such person, to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace with or without sureties as Such Magistrate may think fit."