
(1870) 05 CAL CK 0012

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Ram Chandra
Mookerjee

RESPONDENT

Date of Decision: May 14, 1870

Judgement

Markby, J.

In this case the Deputy Magistrate, having the full powers of a Magistrate, directed one Ram Chandra to cause the removal of certain bamboos, because (as we gather), in the opinion of the Deputy Magistrate, they were injurious to the health of a neighbour who had complained to the Deputy Magistrate. The bamboos were growing on Ram Chandra's own land. Some attempt was subsequently made to induce the Deputy Magistrate to proceed, not u/s 62, but u/s 308, and to appoint a jury. It is not very clear what steps the Deputy Magistrate took upon that application, but a jury was, in fact, never appointed. Subsequently, the bamboos not having been removed, proceedings for disobedience to the order of the Deputy Magistrate were taken against Ram Chandra, and he was sentenced to pay a fine of rupees 25. The case has been sent up to us by the Sessions Judge for consideration, with a view to its being set aside. The operation of section 62 has already been greatly restricted by the construction which this Court has put upon it in the case of *In the matter of Hari Mohan Malo v. Jai Krishna Mookerjee* 1 B.L.R., A.Cr., 20. It was there held that, in any of the cases specified in section 308, the Magistrate had no discretion, but was bound to follow the more special directions of that section, which gave to the owner of the property an opportunity of showing cause before it can be removed or affected. The case before us is not one of those specified in section 308; this decision, therefore, does not apply. It is impossible, however, to suppose that the Legislature intended to give to a Magistrate summary power to issue, without hearing the party concerned, an order such as that issued in this case, by which a man's property would be greatly injured, and could not be restored to its original condition, should it afterwards turn out that the Magistrate was wrongly informed, or that he had acted under a wrong impression. We think that the Magistrate has no power, u/s 62, to issue any

order which is by its very nature irrevocable. All that he has power to compel the owner of property to do is "to take certain order" with it. That does not appear to us to extend to an order to cut down a large quantity of trees. We find that a somewhat similar view has been taken by this Court in the case of *Queen v. Sheikh Golam Darbesh* 1 B.L.R., S.N., 27.

2. We, therefore, consider the conviction was founded on an illegal order; and that the conviction as well as the original order of the Deputy Magistrate ought to be set aside, and the fine, if paid, restored.