

(1879) 04 CAL CK 0031

Calcutta High Court

Case No: None

In Re: Abdool and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: April 21, 1879

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 518

Citation: (1880) ILR (Cal) 132

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

The order of the Magistrate complained of is dated the 21st November 1878, and is in the following terms: "Kine may be slaughtered in the place named in the ikrarnama. They cannot be slaughtered in any other place. A notice to this effect will be issued by beat of drum."

2. This order does not, on its face, purport to be made u/s 518; nor does it determine that there was any emergency, which made it necessary for the Magistrate to resort to the provisions of that section. It is either an order u/s 518, or it is not. If it is not under that section, it does not appear that there is any law which authorized the Magistrate to make it, and no prosecution u/s 188 of the Penal Code could be maintained for disobedience of it. If it is taken to be made u/s 518, the order is bad, inasmuch as it deals with the civil rights of persons without any limitation of time.

3. The object of Section 518 is to enable a Magistrate, in cases of emergency, to make an immediate order for the purpose of preventing an imminent breach of the peace, &c.; but it is not intended to relieve him of the duty of making a proper enquiry into the circumstances which make it likely that such breach of the peace,

&c., will occur. It is, therefore, incumbent on him to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient enquiry, and, if necessary, to deal with the case under the other provisions of the Criminal Procedure Code, which enable him to meet cases of probable breach of the peace, &c. An order made u/s 518 is not bad, simply because it interferes with the legal rights of individuals; but, when such interference is necessary, it is the duty of the Magistrate to limit it as much as possible; and for the purpose he should afterwards hold an enquiry into the circumstances, and determine whether, as a matter of fact, the act prohibited is likely to lead to a breach of the peace, & c, is within or in excess of the legal right of the person forbidden to do it. If it is found that a man is doing that which he is legally entitled to do, and that his neighbour chooses to take offence thereat, and to create a disturbance in consequence, it is clear that the duty of the Magistrate is, not to continue to deprive the first of the exercise of his legal right, but to restrain the second from illegally interfering with that exercise of legal rights.

4. I think, therefore, that, in the present instance, the order of the 21st November 1878 must be set aside as being either in excess of the power given by Section 518, or as being altogether in excess of the jurisdiction of the Magistrate.

Broughton, J.

5. I entirely concur in what has fallen from my learned colleague. I would only add a word with reference to the objection raised, namely, that the subsequent correspondence of the Magistrate would have explained the nature of his order. It appears to me that if the order does not on the face of it show that it was made with jurisdiction, no subsequent correspondence or explanation would make it a good order.