

(1955) 08 CAL CK 0058

## Calcutta High Court

Case No: Criminal Revision Case No. 477 of 1955

Sumir Chandra Moulik

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Aug. 5, 1955**Acts Referred:**

- Calcutta Police Act, 1866 - Section 23, 29

**Citation:** 60 CWN 789 : (1957) 2 ILR (Cal) 701**Hon'ble Judges:** Debabkata Mookerjee, J**Bench:** Single Bench**Advocate:** Nalin Chandra Banerjee and Hunil Kumar Mukherjee, for the Appellant; Amiyalal Chatterjee, for the Respondent

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**Judgement**

Debabkata Mookerjee, J.

The Petitioner in this case was convicted u/s 29 of the Police Act (Act V of 1861) and sentenced to pay a fine of Rs. 150 in default to suffer rigorous imprisonment for three weeks.

2. The facts shortly stated are that premises No. 92/C/1 Tollygunge Circular Road was at one time requisitioned by Government for military occupation. Sometime in 1947 the military personnel left the premises but there was no order derequisitioning the house. In May, 1948, some refugees went into occupation without the permission of the military authorities. On August 28, 1954, the Petitioner who is a sub-inspector of police attached to the District Enforcement Branch, 24-Pargands, wrote a letter to the Garrison Engineer, Fort William, complaining of theft of certain fixtures etc. from the premises a portion of which he in fact had been occupying since 1948. On receipt of that information the military authorities were put upon an enquiry and the Petitioner was found actually in occupation of the eastern portion of the premises. Thereafter the matter was referred to the Superintendent of Police, 24-Pargands, by the Garrison Engineer.

Enquiries undertaken by the Superintendent of Police. 24-Pargands, having confirmed the information received that the Petitioner had been in unlawful occupation of a portion of the premises, the Petitioner was directed to vacate the premises within a certain date. The Petitioner took time on the ground of illness to comply with the order; but at last he not having vacated the premises a complaint u/s 29 of the Police Act was preferred against him on October 29, under orders of the Superintendent of Police, 24-Pargands.

3. In the complaint thus preferred, the gravamen of the offence alleged against the Petitioner was that although he had been ordered by the Superintendent of Police, 24-Pargands, to remove himself from the premises in question he disobeyed the order thus lawfully made by competent authority and was in consequence liable to be convicted u/s 29 of the Police Act (Act V of 1861).

4. To the allegations preferred against him, the Petitioner pleaded innocence and his case seems to be that he could not be punished u/s 29 of the Police Act inasmuch as the order of the Superintendent of Police, 24-Pargands, directing him to vacate could not be an order contemplated u/s 23 of the Act for violation of which a prosecution could be sustained u/s 29.

5. The facts alleged do not appear to be in dispute except in very minor details to which no reference need be made at all. Taking the facts as they are, it is to be seen whether the Petitioner could be legally convicted of an offence u/s 29 of the Act on the allegations made.

6. Mr. Banerjee appearing in support of the Rule has contended that whatever else may be said against his client it could not be said that the elements of the offence charged have been made out or established against him. Mr. Chatterjee appearing for the State has on the other hand argued that the provisions of the Calcutta Police Act have been so framed and designed as to bring an order of a Superior Officer of the Police, within the meaning of Section 23 of the Act and consequently the violation of that order or more properly the failure to carry out an order thus lawfully made by such Superior Officer would bring the Petitioner within the mischief of Section 29 of the Act.

7. The learned Magistrate who dealt with the case has based the conviction on the finding that Section 23 of the Police Act makes it obligatory on every police officer to prevent the commission of an offence; in the present case, when the matter of unauthorised occupation of the premises by the Petitioner was brought to the notice of the Superintendent of Police, 24-Parganas, it became the duty of the latter to prevent commission of an offence and consequently the Superintendent of Police was competent to order the Petitioner to vacate the house. In this sense the Magistrate finds that there was a lawful order made by a competent authority u/s 23 of the Act for violation of which the Petitioner was liable to be punished u/s 29 of the Police Act.

8. Section 23 of the Police Act sets out the duties of police officers in general terms and it provides as under:

It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned in the section, without a warrant, to enter and inspect any drinking shop, gaming-house or other place of resort of loose and disorderly characters,

9. Then follows Section 29 of the Act which is in these words, Every police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by any competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

10. Even a casual reference to Section 23 of the Police Act which I have just read cannot possibly leave any body in doubt as to the real content of that section. The section clearly seeks to provide that it would be the duty of a police officer promptly to obey and execute orders and warrants lawfully issued to him by competent authority. Then follows a number of instances which are intended to provide a nearly complete Code of conduct for the guidance of the officer concerned in determining how he is to act and when to act. Then significantly enough the clause follows which has reference to the power of a police officer "for any of the purpose "mentioned in the section" to enter without warrant and "inspect "any drinking shop, gaming house or other place of resort of loose "or disorderly characters". I have not the slightest hesitation to hold that the nature and character of the duties detailed in the body of the section itself are sufficiently explicit and they do not leave the matter in doubt at all as respects their true import and significance. The opening words of the section although couched in general terms have to be read and interpreted with reference to what immediately follows and it is impossible to disregard the very significant manner in which the section closes by reciting that it shall be lawful on the part of a police officer to enter and inspect a gaming house, a drinking shop or a place of resort of loose and disorderly characters. The section, such as it is, has to be construed as a whole and it would be, in my view, wholly

unwarranted to tear off a phrase or clause from its proper context and to attempt to give it a meaning which it can never bear. The Magistrate seems to have thought that the clause relating to the duty of a police officer to prevent the commission of an offence gives power which can be used by a superior officer of the police to correct an erring subordinate by appeal to the words "prevent "the commission of an offence". I for one fail to appreciate what the learned Magistrate may have meant by saying that the Superintendent of Police in this particular instance wanted to prevent the commission of an offence and in that view made the order requiring the Petitioner to vacate the premises. What offence was apprehended to be committed? By whom? These questions remain unanswered. Mr. Chatterjee appearing on behalf of the State attempted to answer them in a rather ingenious manner that the Petitioners' continued occupation might provoke the military into some kind of retaliatory action leading to commission of offences. This postulates the military being on the offensive who and not the Petitioner would then require to be prevented from committing an offence. I am afraid this view is only to be stated to be rejected.

11. I have already observed that the basis of conviction in the present case is the tortured view of Section 23 that the Superintendent of Police had the power to prevent commission of offence by telling the Petitioner to vacate the premises. But the learned Magistrate never paused to consider what offence was intended to be prevented, what offence was likely to be committed and by whom. This preventive action, to be of any meaning and use, has to be related to acts and conduct of parties in question. I cannot, therefore, agree with the learned Magistrate's construction of Section 23; and if that element fails the conviction in the present case founders.

12. Section 29 can only be brought into play if it is established that there has been breach or neglect on the part of a police officer to obey any lawful order made by a competent authority. Before a conviction u/s 29 can possibly be made it has to be proved clearly that the order itself for violation of which a person is prosecuted was an order lawfully made. I consider the basis of the order convicting the Petitioner is a wholly wrong and illusory basis founded on a complete misconception of the real content of Section 23 of the Police Act which inculcates obedience to orders lawfully made, to do the things catalogued in the section ranging from prevention of crimes and public nuisances to bringing offenders to justice.

13. I do not consider that for the purpose of punishing a contumacious subordinate, a Superior Officer of the Police can call in aid the provisions of Section 23 of the Police Act in the manner in which they have been pressed into service. I imagine there are other effective ways of dealing with such contumacy. That being so, the conviction and sentence of the Petitioner cannot possibly be maintained in law.

14. The result, therefore, is that this Rule is made absolute. The conviction and sentence are set aside. The fine, if paid, will be refunded.