

Emperor Vs. Batuk

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Court : Allahabad

Decided On : Dec-03-1935

Reported in : AIR1936All142; 160Ind.Cas.889

Appellant : Emperor

Respondent : Batuk

Judgement :

ORDER

Allsop, J.

1. The learned Sessions Judge of Mirzapur has made a reference to this Court recommending that an order passed under Section 133, Criminal P.C., by a Magistrate of the first class, should be set aside in revision. The Magistrate passed, a provisional order that one Batuk should remove an unlawful obstruction from a public way. Batuk appeared to oppose this order and put in a written statement in which he said, among other things, that there was no public way at the place where the alleged obstruction had been put up. The Magistrate gave him time-to produce evidence and eventually as he asked for adjournments and did not bring any witnesses, the Court made the original order absolute. There was however some material upon the record from which the Magistrate might have concluded that there was reliable evidence in support of the denial of the existence of a public way. The learned Magistrate-appears to have misdirected himself

because he appears to have thought that it was necessary for him to decide as a matter of fact whether there was a public way or not. Under the provisions of Section 139-A, Criminal P.C., where a person against whom a provisional order has been passed under Section 133, Criminal P.C., comes into Court and denies the existence of a public way, it is not for the Magistrate to come to a definite conclusion whether the denial is valid or not. It is his duty merely to see that there is some reliable evidence in support of the denial, that is, in other words, to see whether there is some evidence which, if not rebutted or explained, would lead to a reasonable conclusion that the public way did not exist.

2. In this case Batuk had produced copies of the village records which showed that the alleged obstruction was in certain plots which were recorded as being the property of Batuk's wife obtained by her as a result of a partition. There was also an order passed by a Magistrate on a previous occasion in similar proceedings under Section 133, Criminal P.C., that no public way existed. In these circumstances it was the duty of the Magistrate to stay the proceedings until the matter of the existence of the right of way had been decided by a competent civil Court. ' I, therefore, set aside the order by which the learned Magistrate made his provisional order absolute and I direct that proceedings in the case shall be stayed' until the matter of the existence of the right of way has been decided by a competent civil Court.