

Bechan Teli Vs. Emperor

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Court : Allahabad

Decided On : Nov-25-1924

Reported in : AIR1925All614

Appellant : Bechan Teli

Respondent : Emperor

Judgement :

Daniels, J.

1. This is a reference by the learned Sessions Judge of Ghazipur recommending this Court to quash an order passed against Bechan Teli under Section 137 of the Code of Criminal Procedure. The Deputy Magistrate found that Bechan Teli had built a wall which had encroached on a public lane to the extent of twelve inches and directed him to demolish his wall to that extent. Notice under Section 133 was duly issued against Bechan and he was required to appear and show cause. He put in a written statement alleging that he had merely rebuilt his wall on the old foundation and that he had made no encroachment. He said that only his neighbour Jaikaran against whom proceedings were also taken had made an encroachment. The Deputy Magistrate very properly inspected the spot on 29th July. Ho records in his order that on that day he directed the parties to produce their evidence on the next day. On 31st July neither party produced any evidence and the Deputy Magistrate made his order absolute under Section 137.

2. The point taken by the learned Sessions Judge is that the Magistrate did not comply with the law which directs that when the defendant appears to show cause the Magistrate shall take evidence as in a summons case. The procedure applicable to a summons case is laid down in Sections 242 to 244. When the accused person appears the Magistrate is first to ask him to show cause why he should not be convicted. If he does show cause then the Magistrate first hears the complainant's evidence and then the evidence for the accused. In this case Bechan did show cause why no order should be made against him. The Magistrate should therefore have heard evidence in support of the order before calling on him for his defence. The applicant was certainly prejudiced by this omission.

3. I therefore, set aside the Magistrate's order and direct him to proceed under Section 137 of the Code of Criminal Procedure and to hear evidence on both sides before disposing of the case. This order will not affect the case of Jai Karan who has not objected.