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Sundar Nath Vs. Emperor

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Court : Allahabad

Decided On : Jan-28-1918

Reported in : AIR1918All186(2); 44Ind.Cas.673

Judge : Walsh, J.

Appellant : Sundar Nath

Respondent : Emperor

Judgement :

Walsh, J.

1. I have no power to send for the record in an application for revision relating to proceedings under Chapter XII. Sub-section (3) of Section 435, Criminal Procedure Code, absolutely prohibits 'that course. The law as laid down by the general current of authorities in this Province is that the superintendence section, which is now Section 107 of the Government of India Act, cannot be invoked so as to question proceedings which purport to be proceedings lawfully taken by a Magistrate under Chapter XII. It is well recognized that there is an irreconcilable difference of opinion on this point between some of the High Courts, notably two recent judgments, one delivered by my brother Knox and one delivered in Patna by the former Chief Justice of the Patna High Court based upon the course of authorities. It is obvious that having regard to the view established in this Province it is difficult to question proceedings of this kind at all. It has been said that

proceedings which purport to be under Chapter XII may be improperly taken, improperly brought or conducted, and therefore may be treated as if they were no proceedings under the Chapter. This view is not a sound one and has been frequently dissented from--even by the Privy Council in oases of awards where the arbitrators so long as they act within their jurisdiction are masters of the situation. It has been sought by persons trying to get rid of an award to say that, if they have gone wrong either in law or procedure or something of that kind other than misconduct, although there is no appeal, the award is bad and therefore no award at all. In the same way it is sought to argue that proceedings under Chapter XII where, for example, all the proper parties are not required to attend Court and so forth, being proceedings which are defective and therefore bad, may be treated as though they were no proceedings at all. I think it is impossible to give effect to this view and there is the further difficulty as pointed out by Knox, J., that this cannot be determined without sending for the record. This is just what this Court cannot do.

2. On the other hand there is the difficulty in the other point of view, vie., that though the Legislature has vested in this Court a complete discretionary power of superintendence to check irregular proceedings of inferior Courts which may result in serious injury or injustice, if the view which I have just stated is correct--the view with regard to the sending for record or otherwise enquiring into proceedings under Chapter XII-the jurisdiction of this Court to superintend proceedings under Chapter XII may become a dead letter. I think that this is not necessarily so. There is at any rate one way in which it seems to me both views may be reconciled. If proceedings totally without legal foundation or legislative authority are taken by a Magistrate in the name of proceedings under Chapter XII but not seriously purporting to be taken under, or to comply with the provisions of that Chapter and this Court is satisfied of that fact by reliable evidence, then I think there is clearly a case for interference. I myself interfered in one case which seemed to be a palpable and serious misunderstanding of the powers conferred by this section, where the Magistrate had not even had a report at all which dealt with any question of the breach of peace so that the legal foundation for his authority had never been laid, and in interfering in that case I adopted the dictum of Sir John Stanley who seemed to think that the superintendence section could be applied to

any circumstances to which revision would apply if it had not been expressly excluded.

3. Somehow or other in that case, I do not know how the circumstances were before me, because the record had been sent for and the application had been admitted. It is always open to a party in such a case as this to satisfy the High Court that the property of which he is entitled to possession has been dealt with by an order which has no legal authority at all, and he may do so by an affidavit or in any other reliable manner, and thereby invoke the superintending power of the Court, but I do not think he can ask this Court to interfere in revision or to send for the record, merely by showing that on the face of the judgment the Magistrate has neglected or misinterpreted some of the provisions of the Chapter.

4. The application is rejected.

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