

Harnand and ors. Vs. State

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Court : Rajasthan

Decided On : Mar-13-1957

Reported in : AIR1958Raj305; 1958CriLJ1428

Judge : K.L. Bapna and; K.K. Sharma, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 37, 39 and 133

Appeal No. : Criminal Ref. No. 32 of 1956

Appellant : Harnand and ors.

Respondent : State

Advocate for Def. : M.C. Chabra, Dy. Govt. Adv.

Judgement :

K.L. Bapna, J.

1. This is a reference by the learned Sessions Judge, Jhunjhunu and arises under the following circumstances:

2. The Police Station, Chirawa filed a report under Section 133, Criminal P. C., against Hamand and eleven others with the allegation that they unlawfully obstructed the public way which led from, the town of Ojhto to Chirawa by putting up a hedge and that the said obstruction amounted to a public nuisance. The

report was made to the Magistrate First Class at Chirawa who issued notices to Harnand and others.

They appeared on 7-3-1956 and raised two objections. One objection was that the persons proceeded against were Panchas and could not be proceeded against without the sanction of the proper authority. The second objection was that the place where the obstruction was alleged to have been made was not a public way.

The Magistrate over-ruled the first objection and in respect of second fixed 7-4-1954 for enquiry as required by Section 139 (A) of the Criminal Procedure Code. This order was passed on 7-3-1956.

3. Harnand and others filed a revision before the learned Sessions Judge and it was urged firstly that the Magistrate could not take action without proper sanction and secondly that the First Class Magistrate at Chirawa had no jurisdiction to take action under Section 133, Criminal P. C., or to make an enquiry under Section 139 (A) of the Criminal Procedure Code.

The learned Sessions Judge did not like to express any opinion on the first question because he thought that the Magistrate had no jurisdiction according to an unreported decision of this Court in Single Bench -- Kalu v. Chandgi, Criminal Ref. No. 46 of 1954, D/- 19-8-1954 (A).

He accordingly made this reference that the case be transferred to the court of Sub-Divisional Officer having jurisdiction. This reference came before another Single Judge of this Court and he doubted the correctness of the decision in Kalu's case (A), and has referred the case to a Division Bench.

4. It may be pointed out that the decision in Kalu's case (A) was in proceedings under Section 107, Criminal P. C., and the learned Sessions Judge relying on Judicial Notification No. F. I (60) Jud/50 (III) dated 11-12-1950 had made a reference that the First Class Magistrate had no jurisdiction to take proceedings under Section 107 of the Code.

That reference was accepted without any arguments in respect of the intent or meaning of the notification as the parties were unrepresented and the following

observation came to be made;

'The Notification authorised only the Sub-Divisional Magistrates to entertain security cases and impliedly directed that any other First Class Magistrate could only deal with such cases if they were transferred to their Courts, but such cases could not be originally instituted in their courts.'

5. We have considered the matter afresh. The Judicial Notification is as under:

'In pursuance of Section 37 of the Code of Criminal Procedure, 1898, as adopted to Rajasthan, read with Section 39 thereof, the Government of Rajasthan is pleased to invest the Extra Magistrates mentioned in the schedule annexed hereto, in virtue of their office, with the marginally noted additional powers

Power totake cognizance of offences under S. 190, Criminal P. C.

to be exercised by them within the area as noted against each.

(a) oncomplaint.

(2) The Government is further pleased to direct that cases under Chapters

(b) onPolice reports, and

(c)without complaint.

VIII to XII of the Code of Criminal Procedure will continue to be instituted in the courts of Sub-Divisional Magistrates and will ordinarily be disposed of by them.'

6. We are of opinion that the said notification purporting to confer powers on First Class Magistrates does not operate to take away the powers which had been conferred upon them by the Criminal Procedure Code; Under Section 133 of the Criminal Procedure Code a First Class Magistrate is empowered to take action without being specially empowered in this behalf and he can do so on his own initiation without the case being transferred to him by any Sub-Divisional Magistrate or District Magistrate.

The second paragraph of the notification may be read only as a desire of the Government that these cases should ordinarily be tried by a Sub-Divisional Magistrate but it does not take away the powers of the First Class Magistrates conferred upon them by the Code.

7. There are various matters in Chapters VIII to XII where the jurisdiction of the First Class Magistrate having ordinary powers is concurrent with the jurisdiction of the Sub-Divisional Magistrate or the District Magistrate. In our opinion these ordinary powers are not affected by the notification although certain additional powers have been conferred upon them.

The present case under Section 133, Criminal P. C., is one where a Magistrate First Class can under his ordinary powers granted to him under the Code take action. The judicial notification does not divest and cannot divest the Magistrates of such powers and the second paragraph can only be interpreted as the wish of the Government that the Sub-Divisional Magistrates should not ordinarily transfer cases of the nature referred to in the notification if they are instituted in their courts. (8) On the above interpretation of the judicial notification, the Magistrate, Chirawa had full jurisdiction to entertain the report of Chirawa Police under Section 133, Criminal P. C. and to take action on it and his order directing the parties to produce evidence for an enquiry under Section 139 (A) was well within his jurisdiction.

9. The view taken in the unreported case *Kalu v. Chandgi (A)*, does not appear to be correct.

10. The reference is therefore rejected.