

Forsyth Vs. Wilson and ors.

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Court : Kolkata

Decided On : Mar-10-1893

Reported in : (1893)ILR20Cal670

Judge : Trevelyan and ;Rampini, JJ.

Appellant : Forsyth

Respondent : Wilson and ors.

Judgement :

Trevelyan and Rampini, JJ.

1. In this case the Chief Presidency Magistrate of Calcutta has referred for our opinion two questions--

1st.--Whether the Deputy Commissioner of Police, Calcutta, under verbal instructions from the Commissioner, is empowered to issue search warrants under Section 46 of the said Act?

2nd.--If so, whether such instructions must be issued in each specific case, or may be issued generally.

2. The only section that bears directly upon this question is Section 5 of Bengal Act IV of 1866, which provides: 'The said Lieutenant-Governor may from time to time appoint one or more Deputies to the Commissioner of Police, who shall be

competent to perform any of the duties assigned to that officer under his orders,' It seems to us that the meaning of that section is clear, that the Deputy Commissioner shall have all the powers of a Commissioner subject to the control of that officer, that is to say, the Commissioner may at any time set aside any of his orders, or he may give either in writing or otherwise any special directions with regard to any matter. But, apart from such special direction, any act of the Deputy Commissioner, provided it be within the powers of the Commissioner, is made valid under that section. We do not think that any question, whether an order is written or verbal, can arise under this construction of that section, nor do we think that any instructions, either in writing or otherwise, or either general or in regard to specific acts, are necessary, the Deputy Commissioner being clothed with all the powers of the Commissioner, subject only to what I have said. That, we think, is the only reasonable construction to be given to the Act. Any other construction would place difficulties in the way of the Police, which, we think, the Legislature never intended. That being so, we think what we said above is a reasonable answer to the questions put to us.

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