

DabiruddIn Mohammad and ors. Vs. Emperor

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Court : Kolkata

Decided On : Aug-15-1929

Reported in : AIR1930Cal131

Appellant : DabiruddIn Mohammad and ors.

Respondent : Emperor

Judgement :

Rankin, C.J.

1. In this case an order was made under Section 144, Criminal P.C., prohibiting the petitioners from exercising any act of possession in respect of a certain fishery. The Magistrate made this order on the basis of a police report and that police report did state that a serious breach of the peace was likely to take place unless such an order was made. Thereupon the petitioners applied to the Magistrate to show cause against the order. In the meantime a complaint had been preferred against the petitioners for a breach of the order and the Magistrate for that reason refused to proceed as he is directed by the section to do and to give the petitioners proper opportunity of showing cause against the order. The petitioners' case appears to be that they could have shown to the Magistrate's satisfaction that there was no likelihood of a breach of the peace. The petitioners went on appeal to the District Magistrate who rejected their petition. They accordingly have come to this Court in revision and ask us to set aside the order. By the time we are dealing with it the order has expired and is now of no effect.

2. Mr. Chatterjee on behalf of the petitioners has referred us to certain cases in which this Court has set aside an order of this character notwithstanding that it had expired by lapse of time : see the cases of J.A. Thomson v. Emperor [1909] 13 C.W.N. 195; Bishessur v. Emperor [1916] 20 C.W.N. 758; Chandra Kanta v. Emperor [1916] 20 C.W.N. 981; Chandra Nath v. E.I. Ry. Co. [1919] 23 C.W.N. 145; Ram Gopal v. Narayan Das : AIR1928 Cal446 . So far as the actual order itself is concerned I am not of opinion that that order was without jurisdiction. It is true that one may doubt whether it would not have been better to proceed under Section 145, Criminal P.C., or to proceed under some other section. But on the plain terms of Section 144 it is impossible to hold, in my view that the order is without jurisdiction. These petitioners have been prosecuted under Section 188, I.P.C. and the policy of the legislature with reference to section is to make provision for a contingency that local and temporary orders may, at times, be made without there being a real danger of breach of the peace or other reason justifying it. Accordingly under that section it has to be proved that the accused not merely disobeyed the lawful order but that the act of disobedience was such as caused or involved the risk of a breach of the peace or other danger or trouble. It appears to me, therefore, that if the petitioners in this case are in a position to show that by fishing or by doing what they were forbidden to do no risk of a breach of the peace was occasioned they would have a complete defence to the proceeding.

3. We are asked to send the matter back to the Magistrate notwithstanding that the order has expired so that he may begin the proceedings again, as regards the petitioners' showing cause against the order. I cannot find that this Court has ever made such an order as that after the time when the order under Section 144, Criminal P.C. has expired, nor do I think that it would be a reasonable order to make. It appears to me that if it were shown that the order under Section 144, Criminal P.C. was without jurisdiction we might be justified in view of the prosecution in setting it aside. It does not appear to me that that can be made in this case. This rule must be discharged.

Patterson, J.

4. I agree.

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