

Nandalal Mitra Vs. State

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Court : Kolkata

Decided On : Feb-22-1968

Reported in : AIR1968Cal523

Judge : A.K. Das, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 188

Appeal No. : Criminal Revn. No. 467 of 1967

Appellant : Nandalal Mitra

Respondent : State

Advocate for Def. : Birendra Nath Banerjee, Adv.

Advocate for Pet/Ap. : Sisir Kumar Bose, Adv.

Judgement :

ORDER

A.K. Das, J.

1. This revisional application is against an order passed by a learned Magistrate, Chandernagore, convicting the petitioner under Section 188 of the Indian Penal Code and sentencing him to pay a fine of Rs. 50 in default to suffer simple imprisonment for 15 days.

2. What happened is as follows: The complainant was a tenant in respect of a house under the accused person. Supply of water in the tenant's portion was stopped and the tenant filed an application before the Rent Controller for restoration of the water supply. A notice was served on the landlord for restoration of water supply but this order was violated. Thereafter the learned Magistrate prosecuted the landlord under Section 188 of the Indian Penal Code for violation of the order and convicted him.

3. The learned Advocate for the petitioner has challenged the applicability of Section 188 of the Indian Penal Code for violation of the order of the Rent Controller under the provisions of the West Bengal Premises Tenancy Act, 1956. Section 31 of the Act empowers the Rent Controller to impose penalty for disturbance of assessment etc. Section 34 of the West Bengal Premises Tenancy Act empowers the Controller on the application made to him by a tenant in possession of any premises to serve a notice on the landlord for taking such measures for the maintenance of essential supplies, such as water or electricity etc. On landlord's failure to comply, he may authorise the tenant to take appropriate measures, at the landlord's cost.

4. The question that arises is whether the provision of Section 188 of the Indian Penal Code is applicable in the facts of the present case for violation of the order of the Rent Controller. Section 188 of the Indian Penal Code deals with disobedience of the order duly promulgated by a public servant. The learned Magistrate has held that the order to restore was duly promulgated by the Rent Controller who is a public servant under Section 21 of the Indian Penal Code and as such, the petitioner was liable to be proceeded against under Section 188, I. P. C. The Rent Controller is undoubtedly a public servant but there is no promulgation of the order within the meaning of Section 188 I P C. It is merely a direction to a person to do a certain thing. The question that arises is whether there was due promulgation of any order by a public servant for breach of which the provisions of Section 188 of the Indian Penal Code will apply. The use of the word 'promulgation' is significant and this word means, 'make known to the public, disseminate, proclaim'. Section 188 applies only in the case of promulgation of an order. In essence the word 'promulgate' connotes two ideas (1) make known of an order and (2) the means by

which the order is made known must be by something done openly and in public. Private information will not be promulgation. When an order is notified, or is published by beat of drum or in a gazette or by reading it in open to public, the order can be said to be promulgated. But when a person or a party is asked to do something it is merely a direction on the party and not a promulgation of the order. The section applies to orders made by public functionaries for public purposes and not to an order made in a suit of civil nature between party and party. The learned Magistrate had therefore no jurisdiction to proceed under Section 188 of the Indian Penal Code as there was no promulgation of the order and the conviction is bad.

5. The order of conviction and sentence is therefore set aside. The fine, if paid, shall be refunded.

6. The Rule is made absolute.

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