

**Emperor Vs. Md. Ebrahim and ors.**

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**Court :** Kolkata

**Decided On :** May-07-1941

**Reported in :** AIR1942Cal219

**Appellant :** Emperor

**Respondent :** Md. Ebrahim and ors.

**Judgement :**

Derbyshire, C.J.

1. On 5th April 1941, the District Magistrate of Burdwan rendered -to this Court his monthly statement showing the state of the files in the Courts of the Magistrates of his district at the end of February 1941. In that statement case No. G.R. 1091 of 1940, Emperor v. Ebrahim and 83 others, under Sections 147, 333, 353 and 379, Penal Code, was shown as pending for over three months in the Court of Mr. P.L. Dhar, Deputy Magistrate, first class, Asansol. The explanation of the delay in disposing of the case concluded with the words:

The pleader for the Crown filed a remand petition on 6th March 1941 praying for an adjournment sine die on the ground that the Government wished that the case should not be taken up until further instructions were received from Government. The case was therefore adjourned sine die.

2. Upon that, the Registrar of the appellate side of this Court called for the record of that case from the District Magistrate of Burdwan. That record was received and

examined and after an examination of it a rule was issued by this Court upon the District Magistrate of Burdwan to show cause why the order of Mr. P.L. Dhar, Deputy Magistrate, first class, Asansol, dated 5th March 1941, in Case No. G.R. 1091 of 1940 should not be set aside or such other or further order made as to this Court seemed fit and proper. A copy of that rule was served upon the Crown. The Crown, through the Deputy Legal Remembrancer, has appeared before us to-day.

3. The facts of the case are as follows : On 22nd September 1940, at a place about one mile north-west of Kulti police station in the Asansol sub-division, a body of Hindu processionists approached a certain place where there was a mosque. A body of police some of whom were armed took up a position with a view to preventing disturbances. A body of some three hundred Mahomedans . took up another position close-by. The police after attempts to preserve order opened fire both upon the Mahomedans and upon the Hindus who both eventually dispersed. The police made certain arrests from both Mahomedans and Hindus amounting to 84 in all -about half of them being Hindus and half of them Mahomedans. The persons arrested were brought before the Magistrate concerned at Asansol. They were eventually, as far as one can ascertain, all granted bail. On 18th October 1940, charge sheets were received against each one of them alleging offences under Sections 147, 353, 151, 148, 332, 341 and 107, Penal Code. On 23rd October 1940, the Magistrate, Mr. P.L. Dhar, examined one prosecution witness for four hours and then adjourned the case to 15th November 1940 for further prosecution witnesses. On 15th November 1940, he records : 'Examined one prosecution witness only when the Public Prosecutor files a remand as desired by Government for an adjournment till first week of December.' He then adjourned the case to 6th December 1940 for further prosecution witnesses. The 'remand' so called that was filed by the Public Prosecutor was as follows:

I have the honour to submit that I have been told by the Sub-divisional Officer, Asansol, that the benign Government wishes the case to be adjourned to some day in the first week of December next. I therefore pray that the case be accordingly adjourned.

4. It was upon that application that the case was adjourned, as stated, to 6th December 1940. On 6th December 1940, the trying Magistrate recorded : 'Prosecution prays for time till middle of January 1941 as desired by Government. Adjourned to 14th January 1941.' The application there was dated 6th December 1940, and was as follows:

I have the honour to submit that I have been instructed by the Sub-Divisional Officer, Asansol, to apply for another adjournment of the case till sometime in the middle of January 1941, as the Government desires so. I would therefore pray that the case may be adjourned to some day in the middle of January 1941.

5. On 14th January 1941, the Magistrate recorded : 'Prosecution prays for three weeks' time as desired by the Government. Ad-journed to 5th February 1941.' The letter upon which that adjournment was obtained was as follows:

I have the honour to submit that as desired by the Government the Sub-Divisional Officer has advised me to apply for a further adjournment of the hearing of the case for three weeks. I would therefore pray that the case may be adjourned accordingly.

6. On 5th February 1941, the trying Magistrate recorded: 'Prosecuting pleader prays for one more adjournment of one week. Adjourned to 12th February 1941.' The letter by which the Public Prosecutor applies was as follows:

I have the honour to report that I have been advised by the Sub-Divisional Officer, Asansol, to obtain another adjournment in case for a week as Government wish so. I therefore pray that a week's adjournment may kindly be granted.

7. On 12th February 1941 there is this note : 'Adjourned to 25th February 1941 for further prosecution witnesses as prayed for by the accused.' The accused by that time had evidently got tired of repeated adjournments. Then on a date somewhere after that but before 25th February 1941, the High Court called for the records of this case. When the records were received by the High Court it was noticed that the accused had asked for the matter to be taken up on 25th February. The High Court directed the records to be returned forthwith so that the matter could be

proceeded with. The records of the case, however, did not reach Asansol by 25th February and there is a note in the order sheet as follows:

The Hon'ble High Court has been pleased to call for the records of the case and they have been submitted to that Court: they have not yet been received back. The accused shall be on bail as before and shall appear at call.

8. On 5th March 1941, the Magistrate re-corded:

The record is received. Prosecuting pleader filed a remand petition for a sine die adjournment as desired by the Government. Allowed. Accused to appear at call.

9. The request upon which that adjournment was granted was in the following terms:

I have the honour to submit that Sub-Divisional Officer has advised me that the Government wish that the case should not be taken up until further instructions are received from Government. As it is not known now when further instructions from the Government may be obtained I pray that the case may be adjourned sine die.

10. It was that order which came to the notice of the Registrar of this Court and as a consequence this rule was issued. In showing cause the District Magistrate of Burdwan wrote as follows to the Registrar:

With reference to your letter No. 3257 Cr-dated 23rd April 1941 regarding Criminal Revision No. 407 of 1941 in the matter of Emperor v. Ebrahim and 33 others I have the honour to state that I know of no grounds on which the rule should be opposed. In my executive capacity I have from time to time received orders from Government directing me to instruct the Public Prosecutor to seek adjournments. The final order received was to the effect that pending the receipt of further instructions from Government the case should not be taken up. These orders were duly conveyed to the Public Prosecutor. On no occasion have I been informed of the reason for seeking adjournments; so I am unable to suggest any ground on which the rule should be opposed.

11. The letter above is signed by the District Magistrate. It is clear that the District Magistrate regards the order that was made in this case as indefensible. The matter deserves a little closer consideration. Section 344(1), Criminal P.C., provides:

If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.(2) Every order made under this section by a Court other than a High Court shall be in writing, signed by the presiding Judge or Magistrate.

Explanation--If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appear likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

12. Now, that is the section which deals with the power of a Court to postpone or adjourn proceedings in criminal cases. Nowhere does that provide for an indefinite adjournment of a case. An adjournment sine die means an indefinite adjournment. The policy of the criminal law is to bring persons accused to justice as speedily as possible so that if they are found guilty they may be punished and if they are found innocent they may be acquitted and discharged. I am quite clear that an order of this kind is impossible to uphold. So much for the illegality of the order. This order was made as a result of the letter of the Public Prosecutor dated 5th March 1941 which has been set out previously. Now, the manner in which this order has been procured is open to the gravest possible objection. It is clear from that letter and the letter of the District Magistrate that the Government requested the District Magistrate to obtain that order. The District Magistrate passed on the order of the Government to the Sub-divisional Officer who communicated it to the Public Prosecutor. The Public Prosecutor then requested the Magistrate to make this

order, which is an illegal order, because the Government wished it and because the Sub-divisional Officer had (advised him that the Government wished it.

13. The Government may have certain functions in connexion with prosecutions and for the purpose of the Government conducting prosecutions under Section 492, Criminal P.C., the office of Public Prosecutor was created. A Public Prosecutor represents the Crown in prosecutions. If the Government desire to put in a petition or request to the Court they can do so directly through the Public Prosecutor who is the proper officer to put the matter before the Court. But in this instance a request was made to the Court stating that the Sub-divisional Officer had advised the Public Prosecutor that the Government desired a certain thing. The Sub-divisional Officer had obviously acted upon instructions from the District Magistrate. Both the District Magistrate and the Sub-divisional Officer are superior officers of the Magistrate who was trying the case.

14. Under Section 528, Criminal P.C., it is competent for the Magistrate or the Sub-divisional Officer to withdraw a case from the officer trying it. The officer trying it is clearly subordinate to the Magistrate and the Sub-divisional Officer. But whenever the trying Magistrate is dealing with a criminal case he must deal with it according to law. In matters of procedure, he must follow the Criminal Procedure Code; in matters of evidence, he must follow the Evidence Act, and when he has ascertained the facts according to the provisions of the Criminal Procedure Code and the Evidence Act, he must apply the provisions of the Penal Code to those facts and decide the case in accordance with law. Throughout, the Magistrate who is trying the case is to act judicially just as much as if he were a Judge in the High Court. He ought to be subjected to nothing which could savour of an instruction from an outside source. When he is told that the Government wish a certain thing and express their wish through his superior officers, it is very difficult for him, unless he is a very strong minded person, to deal with the matter strictly in accordance with law.

15. The procedure which has been adopted in this case of sending instructions from the Government through the District Magistrate and the Sub-divisional Officer to the Public Prosecutor and having those instructions reported in the Court of the

trying Magistrate who is subordinate to the District Magistrate and the Sub-divisional Officer is open to the gravest objection. It is not a procedure contemplated by the Criminal Procedure Code. In my view those who issue instructions in that way, those who forward those instructions, and those who obey them do not act according to law. I wish these remarks should be noted by those who are concerned in matters of this kind. For the reasons which I have stated, I am of the opinion that this rule must be made absolute. I understand from the Deputy Legal Remembrancer that this matter is now considered to be suitable to be dealt with in the Courts and that it will go before the Courts without any further, delay. It has been represented that possibly public feeling was such that it was inadvisable to proceed with the case up to now. It will now be proceeded with. Under those circumstances the rule is made absolute, the order of the Deputy Magistrate dated 5th March 1941, is quashed and this case is sent back to the Magistrate for him to hear and determine it according to law.

**Bartley, J.**

16. I agree.

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