

Divisional Superintendent, Eastern Railway Vs. Surendra Nath Chatterjee and ors.

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Court : Kolkata

Decided On : May-07-1957

Reported in : AIR1959Cal574,1959CriLJ1066

Judge : S.N. Guha Ray, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 133, 137 and 539B

Appeal No. : Criminal Revn. No. 449 of 1957

Appellant : Divisional Superintendent, Eastern Railway

Respondent : Surendra Nath Chatterjee and ors.

Advocate for Def. : Saroj Bagchi, Adv.

Advocate for Pet/Ap. : Bhabesh Narayan Bose, Adv.

Judgement :

ORDER

S.N. Guha, J.

1. This Rule is directed against an order passed by the Sub-divisional Magistrate of Serampur in a proceeding under Section 133 of the Cr. P. C.

2. It appears that on behalf of the Eastern Railway a letter was written to the Sub-divisional Officer on 11-12-1956, by the Divisional Superintendent, Howrah. In this letter he invites a reference to certain other letters mentioned at the top and asks him to direct the owners Mrs. Sailabala Debi of Panchanantala Baidyabati and M/s. Surendra Nath Chatterjee and Bros., Panchanantola Biadyabatim to dismantle the walls immediately so as to ensure safety to running trains, the allegation being that these walls are in an extremely dilapidated condition and may collapse at any time causing danger to running trains. On the record I find with this letter a copy of memorandum, dated 15-11-1956, from the Assistant Engineer, No. 2, to M/s. Surendra Nath Chatterjee and Bros., Panchanontola, Baidyabati, Howrah, and it runs as follows:

'The front Hall of your building alongside the down slow line between Baidyabati and Sheoraphully at mile 14/4 is in extremely dilapidated condition and leaning towards the track by about 1'-3'. The wall is about 20' high and is 14'-6' away from the centre of the down slow line. It is apprehended that the wall which is already heavily cracked may collapse at any moment and may cause danger to running train. You are, therefore, requested to dismantle this wall immediately so that safety to running trains can be assured'.

Copies of this Memorandum appear to have been sent to the Sub-divisional Officer, Serampur, and the District Magistrate, Hooghly, for information and for asking the above party to dismantle the wall immediately in the interest of public safety.

3. There is also on the record another letter, dated 24-11-1956, from Assistant Engineer No. 2, E. Railway, to Mrs. Sailabala Debi which is almost in the same terms as the earlier memorandum to M/s. Surendra Nath Chatterjee and Bros. Copies of this letter were also sent to the Sub-divisional Officer, Serampur and the District Magistrate, Hooghly.

4. On the strength of these letters the Sub-divisional Magistrate directed the persons mentioned in these letters to remove the said wall within seven days from the receipt of copy of the order, or to appear before him and show cause on 2-1-1957, why the order should not be enforced.

5. The opposite parties showed cause on 7-1-1957. The cause shown, in substance, is that the proceeding is bad in law there being no proof that the state of the building in question is dangerous at present and not in future; that there was an indication board fixed by the Railway specifying the speed limit of trains not exceeding 20 miles per hour at that part of the Railway where the building stands but that board had long been removed by the Railway authorities, and as a result of the removal of the said indication board the speed limit had been relaxed and damage was being caused to the building by the running of trains at unlimited speed, causing continuous vibration and shock to the building for which the Railway was liable for civil damages; that the building in question stood on private land at a considerable distance from the Railway and caused neither any obstruction nor any encroachment and the Railway was always at liberty to raise a protection wall on its own land against any future damage if it so liked; that there was no imminent danger to the passerby through the municipal road, otherwise there would have been complaint either from the municipal authorities or from the public in general; and lastly that the wall in question is a wall on which rest two roofs of a two storied building wherein the owners live with their family and had it been in state of imminent danger they could not have lived there with their family.

6. On 28-1-1957, on behalf of the owners a further petition was filed before the Magistrate saying that opposite party No. 1 was a widow having nobody to look after her and she lived on the charity of her relations; that opposite party No. 2 was an old man and worked as a peon in Baidyabati Sheoraphuli Co-operative Society Limited on a very small salary; that opposite parties Nos. 1 and 2 were passing through so much financial stringency that they could hardly maintain themselves, not to speak of undertaking any repair of the building in question; that the wall in question not being a boundary wall, but a wall on which rest two roots, one of the ground floor and the other of the first floor, its demolition required heavy expenditure which opposite parties Nos. 1 and 2 were not in a position to meet; and that the owners were not in a position to contest the present proceedings. In these circumstances, there was a prayer that in view of the helpless state and condition of these two opposite parties the Court should be pleased to direct the Eastern Railway authorities to get the said wall repaired at their own costs.

7. Meanwhile, after the opposite parties showed cause the learned Magistrate inspected the place on 14-1-1957.

8. On 9-2-1957, the learned Magistrate passed the final order the material portion of which runs as follows:

'The building is situated alongside the Railway lines of the Eastern Railway between Sheoraphuli and Baidyabati Station on mile No. 14/4, A wall of the said building by the side of the Railway line is in an extremely dilapidated condition and is likely to collapse and fall on the Railway line. The wall is 20 feet high and is 14 feet six inches away from the centre of the Down Railway line and stands very adjacent to the Public Permanent way. There is therefore an apprehension of injury to the public and passers by and as such the safety of the public is in danger. I issued a conditional order under Section 133. Cr. P.C. upon the three members of the opposite party directing them to remove the said dilapidated wall within seven days from the date of receipt of the order. Surendra Nath Chatterjee has not appeared. Notice has been served upon him in a manner laid down under Section 137 Cr. P. C. Panna Lal Chatterjee and Sailo Baia Debi appear. They do not deny the public character. Hence I do not proceed under Section 139A of the Cr. P. C. I held a local inspection and found that the contention of the Railway is genuine. The wall is in a dilapidated condition and is likely to collapse and fall on the Railway line, of the Eastern Railway causing injury to the public and to the running trains. The members of the opposite party also state that they have got no objection to the demolition. They suggest that they are in straitened circumstances, and that it is beyond their means to carry on the work of demolition and reconstruction.

I, therefore, direct the members of the opposite party to remove the aforesaid dilapidated wall within seven days from the date of receipt of the order. As the situation is one of emergency, and as the members of the opposite party have not got the means to carry on the work of demolition and to repair the same for the purpose of habitation, I order that the Eastern Railway do bear the cost of construction, and make the necessary works of repair for the purpose of making the building habitable'.

On behalf of the Railway the second part of the order under which the Railway was required to bear costs of construction and repairs for the purpose of making the building habitable is being challenged as illegal.

9. I think the whole final order should be set aside.

10. Although the information on which action was taken was not by itself self contained, the learned Magistrate as well as the parties fully understood the identity of the wall which was required to be demolished, because there were certain enclosures to the letter of the Railway, from which there could be no doubt as to the identity or the building in question, it is, however, desirable to state in the application itself all the particulars necessary for the drawing up of proceedings under Section 133 of the Cr. P. C. but the mere fact that all these particulars are not contained in the letter would not justify me in setting aside even the conditional order, particularly when the parties knew what building it was of which a wall was in danger of falling down.

11. The learned Magistrate appears to have followed a wrong procedure throughout. After the parties showed cause, he made a local inspection. Under Section 539-B(1) of the Cr. P. C. a Magistrate making a local inspection has without unnecessary delay to record a memorandum of any relevant facts observed at such inspection, and under Sub-section (2) such memorandum is to form part of the records of the case so that if the public prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost. In this case no memorandum of local inspection was made by the Magistrate and the parties could not have known at all till the final order was passed, what actually the Magistrate saw during his local inspection. This is in contravention of the provisions of Section 539-B of the Code.

12. Then after the parties had shown cause, the Magistrate should have clearly proceeded under Section 137 of the Code of Criminal Procedure which requires him to take evidence in the matter. The learned Magistrate says that the members of the second party did not deny the public character, by which obviously he means the public character of the Railway line. I do not understand how anybody could have denied the public character of the Railway line, but that is not the point

in dispute. The question in this case is whether or not the building is in such a state that one of its walls is in danger of falling down and thereby endangering the safety of the persons, using the adjacent public pathway or of trains running along that line.

13. If, in fact, the wall is in danger of falling down and causing danger, then the further question is what steps are necessary for preventing this. It is necessary to remove the wall altogether or is it likely to be enough if some sort of support is contrived to the wall that is in danger of falling down. It is also to be considered whether any other steps can reasonably be taken in the circumstances of the case to avert the apprehended danger. These are matters which cannot be decided without going into evidence.

14. The second part of the order is quite illegal. It saddles the first party with the costs of the repairs and the demolition of the building belonging to the second party when the wall of that building is likely to cause danger to the public.

15. I have pointed out already that the whole of the final order is illegal and must be set aside. The Rule is accordingly made absolute and the case sent back to the trying Court for disposal according to law from the point where the second party showed cause. The application of the second party, dated 28-1-1957, is really a plea that the members of the second party are too poor to afford to have the wall demolished or to have the same repaired and that they are not in a position to contest the proceedings. Even then the learned Magistrate is to take evidence in the matter and dispose of the whole case on the evidence adduced according to law.