

B.N. Sasmal Vs. Emperor

B.N. Sasmal Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/874160

Court : Kolkata

Decided On : Dec-16-1930

Reported in : AIR1931Cal263

Appellant : B.N. Sasmal

Respondent : Emperor

Judgement :

Rankin, C.J.

1. In this case the learned Sessions Judge of Midnapore has referred to us under Section 438, Criminal P. C, an order made by the Additional District Magistrate of that place, dated 15th November 1930. By that order, after reciting certain matters, the Magistrate gave the following direction:

I direct that the said Mr. B. N. Sasmal, Bar-at-law, at present in the town of Midnapore within the local limits of ray jurisdiction, under Section 144, Criminal P. G., do abstain from staying at the town of Midnapore or any part of the district, and to leave the district by the next available train and also to abstain from returning to any place within the district with effect from the date of the order for the statutory period of two months.

2. I omit all reference to other matters which the Sessions Judge has referred to in his reference as reasons why this order must be set aside as bad, either bad in

point of propriety or bad in point of jurisdiction; but I am very clearly of opinion that when, for purposes of preventing disturbances of public tranquillity, a Magistrate is given power to direct any person to abstain from a certain act, he cannot make an order which is in effect not a direction to abstain from doing anything but a direction upon a person to remove himself from the district and to do so by the next available train. It is not necessary for this purpose to enquire whether it would be a possible order to direct a person to abstain from coming within a district at all. It may be that such an order is a possible one; it may also be that before such an order could stand as a proper one very special conditions would have to be made out. I am quite clear that it was never intended by Section 144, Criminal P. C, that a man might be ordered to remove himself, not only from his own house, but also from his own district, and to do so by the next available train. If the statute had intended that people were to be ordered to do these things by the next available train, I should have expected the subsection to go on dealing with questions of railway fare and taking some other steps to make it reasonable. The very reason why the section uses the language 'abstain from a certain act' is just because it is not intended to empower Magistrates to make positive orders requiring people to do particular things. In my judgment this order is bad in its character and, on that ground, it must be set aside. The reference must be accepted. No order is necessary on the application, the subject matter of Miscellaneous Case No. 221 of 1930.

Graham, J.

3. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com