

Karim Bux, Vs. Emperor

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Court : Kolkata

Decided On : Nov-08-1919

Reported in : 57Ind.Cas.101

Judge : Syed Shamsul Huda and ;Ghose, JJ.

Appellant : Karim Bux, ;fakir Mahamud and ;hosan Ali Bepari and ors.

Respondent : Emperor

Judgement :

1. In this case the names of the petitioners were entered in a register made in accordance with the provisions of Section 5 of the Criminal Tribes Act and on the register being lodged with the Superintendent of Police, an application was made to the Magistrate to the effect that the petitioners' names should be removed from the register. The Additional District Magistrate thereupon made a inquiry and submitted a report to the District Magistrate, and the latter on a consideration of that report rejected the petition. Against this order upon an application by the petitioners a Rule was issued on the District Magistrate calling upon him to show cause why that order should not be set aside, and the learned Vakil has in support of the Rule urged that we should direct the District Magistrate to make an enquiry into the facts alleged by the petitioners in support of the application for the removal of their names from the register.

2. The first question that arises for our consideration is the question of the jurisdiction of this Court to interfere with such an order. Having considered the provisions of the Act, it seems to us that the District Magistrate in granting or refusing an application to take the name of a person out of the register does not perform any judicial functions, that his functions are administrative and that upon this view of the case this Court is not entitled to interfere with the order complained of.

3. In support of the contention that this Court has jurisdiction to deal with the order reliance has been placed on a decision of this Court in the case of *Rajani Khemtawali v. Emperor* 5 Ind. Cas. 323 : 14 C.W.N. 404 : 37 C. 287 : 11 C.L.J. 297 : 11 Cr. L.J. 112. That case deals with an order passed under the Eastern Bengal and Assam Disorderly Houses Act, an Act to provide for the discontinuance of brothels and disorderly houses in certain localities in Eastern Bengal and Assam. The provisions of that Act are very different from the provisions of the Criminal Tribes Act. That Act gives jurisdiction to a Magistrate of the First Class to order an owner, tenant, manager or occupier to discontinue the use of any house as brothel, 'A Magistrate of the First Class' itself signifies a Magistrate exercising certain judicial powers, and is a Criminal Court within the meaning of Section 5, Criminal Procedure Code. In this case power is given to the District Magistrate, who has executive as well as judicial functions to discharge. That case, therefore, is not, in our opinion, sufficient to show that this Court has jurisdiction to deal with an order of this kind. The learned Vakil for the petitioners has also relied on the provisions of Section 28 of the Criminal Tribes Act, which lays down that certain orders passed under the Act cannot be questioned by a Court of Justice. It has been contended that the present is not one of the orders so excepted. That is no doubt correct. But the fact that the Legislature expressly excepted certain orders from the jurisdiction of Courts of Justice does not by necessary implication make all other orders subject to such jurisdiction.

4. In support of the opposite contention the Deputy Legal Remembrance has relied on the case of *Rohoma Sirkar*, In the matter of the petition of (2). That case seems to us to apply more directly to the question under our consideration than the case relied on by the other side. We are, therefore, of opinion that the Magistrate in

making the order did not act as a Court and that this Court has no jurisdiction to interfere with that order.

5. But apart from this it seems to us that the Magistrate is nowhere required by law to make any enquiry. The matter is left absolutely to his discretion. Section 8 of the Act says: 'Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the District Magistrate against such entry and the Magistrate shall retain such person's name on the register or enter it therein or erase it therefrom, as he may see fit.' It does not appear that the law requires that the Magistrate should enter into any enquiry and the fact that he has not made any enquiry himself is not fatal to the validity of the order. There was an enquiry by the Additional Magistrate and on the authority of that enquiry the Magistrate rejected the application. It is true that that report of the Additional Magistrate does not disclose materials which in a Court of law would have been considered sufficient for an order refusing the removal of the petitioners' names. But we do not think that we can go behind the order.

6. The Rule is accordingly discharged.

7. Our judgment in No. 791 will govern these two cases also and the Rules issued in these cases are also discharged.