

C.E. Mc Intosh Vs. Nirmal Chandra Sur and anr.

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Court : Guwahati

Decided On : Mar-07-1958

Judge : Sarjoo Prosad, C.J.

Appellant : C.E. Mc Intosh

Respondent : Nirmal Chandra Sur and anr.

Judgement :

Sarjoo Prosad, C.J.

1. These two references have been made by the learned Sessions Judge of Cachar for setting aside orders dated 5-1-57 passed by the learned Additional District Magistrate, refusing to take action against the opposite party under Section 144 of the Code of Criminal Procedure. As the points involved are almost similar, they are both disposed of by this judgment.

2. The applicant in both the cases is the Manager of the Rampore Tea Estate in the district of Cachar. He alleged that the opposite parties were employees of the tea estate and during the period of their employment they had been given residential quarters. Subsequently, on some ground, to which it is unnecessary to refer, it appears that the tea estate dispensed with the services of the opposite parties and asked them to vacate the quarters in their occupation; but the opposite parties refused to do so.

It was further alleged that in addition to their refusal to vacate the quarters, which they were lawfully bound to do, the opposite parties had been creating trouble amongst the labourers working in the tea estate. He accordingly prayed that they should be ordered under Section 144 of the Code of Criminal Procedure to vacate the houses in their occupation, and that they should be restrained from obstructing the Manager of the tea estate in taking possession of those quarters.

3. The application was sent for enquiry and report to the local Police who reported that the opposite parties were responsible for fomenting trouble amongst the labourers in the tea estate. The Magistrate, however, refused to take any action under Section 144 of the Code of Criminal Procedure on two grounds. He points out that there is an industrial dispute pending before the Industrial Tribunal in respect of the dismissal of these employees and that under Rule 66 framed under Section 16 of the Plantations Labour Act, 1951, the two employees were entitled to remain in occupation of their respective residential quarters which they have been occupying, until disposal of the matter.

The other reason which the learned Additional Dist. Magistrate gave for not

proceeding under Section 144 of the Code was that already proceedings under Section 107 of the Code were pending against these employees. These reasons are quite sound and justify the action taken.

4. The learned Sessions Judge, however, has made a reference to this Court mainly on the ground that the refusal to take action under Section 144, Cr. P. Code, was in contravention of some observations made by this Court in *Amulyabhu-shan Chaudhuri v. Sudhindrakumar Deo*, Criminal Revn. No. 59 of 1955 (Assam) (A). In that case, Deka, J. observed that in cases of emergency, private rights should not stand in the way of an order under that section where the Magistrate thought that, in the circumstances of a particular case, such an order was necessary to preserve public peace.

The allegations in this case were that the opposite parties employees were fomenting trouble in the labour circle working in the tea estate, and the learned Counsel for the petitioner relies on the Police report in support of those allegations. If these allegations are correct, I see no reason why a proceeding under Section 107 of the Code of Criminal Procedure, which is pending between the parties, should not prove effective. In case the Magistrate finds that the opposite parties are actually trying to commit a breach of the peace or disturb public tranquillity or doing any wrongful act that may occasion a breach of the public peace or disturbance of public tranquillity, he can pass appropriate orders under that section to prevent the opposite-parties from doing so.

In fact, a proceeding under Section 107, Cr.PC in those circumstances, would be the most appropriate proceeding. But, if the intention of the petitioner is that the opposite parties should be evicted from the houses in their occupation by an order under Section 144, Cr.PC then his remedy is obviously misconceived. Section 144, Cr.PC, 'is not meant to be utilised for that purpose. It is true that if the Magistrate thinks that immediate prevention or speedy remedy is desirable, he is entitled to make an order under Section 144, Cr.PC directing any party to abstain from a certain act, or to take certain order with certain property in his possession or under his management.

That, the Magistrate can always do so when such an order is necessitated by the circumstances of a particular case to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life and safety or disturbance of the public tranquillity or a riot or an affray, is clear on the face of the section itself.

There is no such thing here. The only allegation is that these employees who were and are in occupation of these premises, have been dismissed from their employment and, therefore, they are liable to vacate the said premises. This, by itself, is no ground for an order under Section 144 of the Code, and obviously when the Magistrate refused to act under Section 144 of the Code, he thought that no such immediate prevention or speedy remedy was necessitated as to compel him to act thereunder. The section is meant merely for emergency purposes, and the Magistrate has to utilise his sound discretion in utilising its provisions.

The observations made by Deka, J, in the case in question do not in any manner support the contention of the petitioner. The whole baste for the application is that the opposite parties have been fomenting trouble amongst the labourers by continuing to reside in those premises. That complaint, if it has any foundation in

fact, can be adequately met by the proceeding under Section 107 of the Code of Criminal Procedure. In my opinion, therefore, the orders passed by the learned Additional District Magistrate ' are fully justified in law and do not warrant interference.

5. The references are, therefore, discharged.

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