

**Ananda Chandra Bhattacharjee Vs. Carr Stephen**

**LegalCrystal Citation :** [legalcrystal.com/861190](http://legalcrystal.com/861190)

**Court :** Kolkata

**Decided On :** Nov-13-1891

**Reported in :** (1892)ILR19Cal127

**Judge :** W. Comer Petheram, Kt., C.J. and ;Ghose, J.

**Appellant :** Ananda Chandra Bhattacharjee

**Respondent :** Carr Stephen

**Judgement :**

W. Comer Petheram, C.J.

1. This was a rule which was obtained for the purpose of revising an order of the District Magistrate of Mymensingh, dated the 15th September in this year, and which, on its face, professed to be made under Section 144 of the Code of Criminal Procedure.
2. The order was an order forbidding a person who claimed an interest in certain properties from collecting any rent from the raiyats on the properties; and the only question which it appears to us necessary to decide is whether such an order can be made under that section at all.
3. The section appears in the chapter which is headed 'Temporary Orders in Urgent Cases of Nuisances,' and reading the whole chapter we think it clear that it relates to interference or dealing of some kind with the land itself or with something erected or standing upon it; and the section is directed to the prevention or direction by prompt order of some definite act on the part of an individual so that injury or nuisance may not be caused. Sections 145 and 146, which are in the next chapter, deal with the possession of property, and are sections which may be appropriately referred to where it is desired to prevent interference by one party with the collection of rent by another, and matters of that kind.
4. On the whole, we think that such a case as the present, where the Magistrate is asked to interfere to prevent a person from collecting rents from the raiyats generally of any property, does not fall within Section 144 at all.
5. But this matter is not new. In the case of Abayeswari Debi v. Sidheswari Debi I.L.R. 16 Cal. 80 a Division Bench of this Court took exactly the same view. In that case, which is absolutely on all fours with the present, this Court held that such a case as this was not within Section 144. And that was also the view that was taken in the case of Prosunno Coomar Chatterjee v. The Empress 8 C.L.R. 231: The Magistrate, Mr. Phillips while making the order complained against, has apparently ignored or lost

sight of these decisions, which he was bound to have followed.

6. The only other point which has been argued before us, and this is the point which has been most pressed, is that this Court has no jurisdiction to interfere with this order at all, on the ground that orders made under Section 144 are, by the last clause of Section 435, exempted from the operation of that section. The first answer which can be made to that is, that the mere statement that an order is made under Section 144, if it is not such an order as is contemplated by the section, and could not be made under it, does not make it an order under that section, and consequently any Court having jurisdiction to review orders under Section 435 would not be prevented from doing so by the proviso to that section, because the order under review, though headed under Section 144, was not in fact made under that section at all. See *Re Krishna Mohun Bysack* 1 C.L.R., 58.

7. But there is another answer. Under Section 439, this Court has the general power of revision of all orders made by inferior Criminal Courts which come before it in any way whatsoever; and it is clear that this Court, under Clause 15 of the Charter, has a general power of superintendence, and under that power can send for any record which it may desire to see. In this particular case this Court did send for the record; but as the Magistrate had already sent the record to the Bengal Government, the record was sent for from that Government, and it has now come to this Court in pursuance of that requisition, so that the record is now before the Court in a perfectly regular and proper way, and under Section 439 this Court has cognizance of that record, and sees, upon the face of the record, that an illegality has been committed, and that an order has been made which the Magistrate has no jurisdiction to make.

8. We are further of opinion, that this Court has power to interfere under the Charter Act if the proceeding of the Magistrate is *ultra vires* and could not be made under Section 144. That this is so has been accepted in this Court for a great many years, both under Section 144 of the present Code and Section 518 of the old Code. There is a whole current of decision to that effect with which we agree see *Banee Madhub Ghose v. Wooma Nath Roy Chowdhry* 21 W.R. (Cr.) 26 *Chunder Coomar Roy v. Omesh Chunder Mojoomdar* 22 W.R. (Cr.) 78 *Sree Nath Dutt v. Unnoda Churn Dutt* 23 W.R. (Cr.) 34 *Shurut Chunder Banerjee v. Bama Churn Mookerjee* 4 C.L.R. 410 *Bradley v. Jameson* I.L.R. 8 Cal. 580 *Gopi Mohun Mullick v. Taramoni Chowdhrani* I.L.R. 5 Cal. 7 *Empress v. Prayag Singh* I.L.R. 9 Cal. 103 *Abayeswari Debi v. Sidheswari Debi* I.L.R. 16 Cal., 80. The learned vakil for the opposite party before us has, however, relied upon a Full Bench decision of this Court in *Re Chunder Nath Sen* I.L.R., 2 Cal., 293, but that case was considered and explained in the case of *Re Krishna Mohun Bysack* 1 C.L.R., 58, and in the case of *Gopi Mohun Mullick v. Taramoni Chowdhrani* I.L.R. 5 Cal. 7 which was a case decided by a Full Bench composed of 12 Judges of this Court. The rule will be made absolute.