

## Ram Cherey vs Baba Ram Priya Das on 14 September, 1950

**Equivalent citations: AIR1951ALL435, AIR 1951 ALLAHABAD 435**

ORDER

Misra, J.

1. This is a reference by the learned Additional Sessions Judge of Bahraich in a cage under Section 133, Criminal P. C. The recommendation is that the order of Sari Farhat Ali, Sub-Divisional Magistrate of Nanpara dated 16-4-1950 be set aside and the matter be dealt with according to law.

2. The facts are not in dispute. The learned Magistrate's predecessor, Shri J. N. Pradhan passed a preliminary order on 18-1-1950, on the complaint of Ram Cherey alias Ram Charan calling upon Baba Ram Priya DAS, opposite-party, to remove certain obstructions which, according to the evidence before the learned Magistrate, appeared to encroach upon a public pathway in village Rupaidith. He was given, in pursuance of the provisions of Clause (1) of Section 133, Criminal P. C., the option to appear before the Court on 27-1-1950, and to make a motion for setting aside or modifying the order, if he thought fit. On the date fixed, however, the notice was not returned to the Court after service and the case was adjourned to 8-2-1950. On that date service was held to be insufficient. The case was postponed to 20-2-1950, and the learned Magistrate gave elaborate directions in accordance with Section 134 (2) of the Code to the effect that if Ram Priya Das was not at his house and personal service could not be effected on him notice should be given by beat of drum and a copy thereof should be stuck on the gate of the premises of Baba Ram Priya Das and also at the place where the offending encroachments were made. The order was carried out in due course and the information contained in the notice was also conveyed to one Prabhu Das who was found on the premises and was a chela, of Baba Ram Priya Das. Notwithstanding all this, no one appeared on 20-2-1950, to show cause on behalf of the opposite party. Shri Pradhan, therefore, made the order absolute and gave a warning that if the unlawful encroachments were not removed by 1-3-1950, Baba Ram Priya Das would render himself liable to prosecution under Section 188, Penal Code. On 27-2-1950, the opposite party presented himself in Court and filed objections against the final orders. He alleged that he was not personally served with notice, that Ram Cherey was aware that he was living in Ajudhia, that he had no knowledge of the proceedings till 26-2-1950, that he had not made the alleged encroachments, that the land belonged to the temple and that if it be established that the constructions complained of constituted obstructions to any public pathway the responsibility therefor rested on some other persons.

3. The objections came up on 16-4-1950, before Shri Farhat Ali, who had meanwhile succeeded Shri Pradhan. Baba Ram Priya Das somehow persuaded Shri Farhat Ali to reopen the matter and to hold that the pathway was not a public way and that the so called constructions existed on Babaji's own land. The learned Magistrate came to the conclusion that no action could be taken against Baba Ram Priya Das but he nevertheless passed the following order:

"I find that Ram Cherey's house is virtually cut off from the rest of the village if the path is closed to him. . . . . Baba Priya Das will, therefore, . . . allow carts brought by Ram Cherey to pass through it. The carts will be required by Ram Cherey only now and then and he will not unnecessarily harass Babaji by bringing carts to his house daily."

4. Dissatisfied with the aforesaid order, the complainant went up to the Court of the Additional Sessions Judge Bahraich, in revision. The learned Judge is of opinion that Shri Pradhan's successor had no jurisdiction to cancel or modify his order of 20-2-1950, and that the subsequent order should, therefore, be set aside. Hence the reference.

5. There can be no doubt that if a Magistrate empowered to make an order under Section 133, Criminal P. C., follows the procedure prescribed by that section and Section 134 and the person against whom the preliminary order was made does not perform, within the time and the manner specified any act directed thereby or appear in accordance with such order and show cause against it or apply to the Magistrate to appoint a jury to try whether the order was reasonable or proper, it would be presumed that the order was correctly made and the provisions of Section 369 of the Code would thereafter come into play. That section provides that save as otherwise provided by Criminal P. C., or by any other law for the time being in force, no subordinate Court when it has signed its judgment shall alter or review the same except to correct a clerical error. This is because after a case has been finally disposed of, a Court in the absence of any statutory provision in that behalf ceases to have any further jurisdiction over the matter. It follows that a fresh application in respect of the subject-matter of the prior adjudication cannot be entertained and the previous order could not be reconsidered. The word 'judgment' includes the decision of the Court trying the case and it is not possible to hold that the prohibition does not apply to the final order passed by Shri Pradhan under Section 136, Criminal P. C. The contention urged before Mr. Farhat Ali on behalf of the objector, as shown by his objections, was that the case ought not to have been decided under Section 136 in view of the fact that personal notice was not effected on him. He purported in other words to show sufficient cause for his absence on 20-2-1950. The law laid down in Chap. X of Criminal P. C., does not contemplate the setting aside of the previous order if the procedure for service prescribed by Section 134 is followed. The question as to whether personal service on the opposite party is or is not possible in a given case is not one which can be agitated in the trial Court after the disposal of the case and the discretion exercised by one Magistrate cannot be made the subject-matter of objections before his successor.

6. The learned counsel for Baba Ram Priya Das has tried to support the order of Shri Farhat Ali by reference to Section 661-A, Criminal P. C., it being urged by him that on principle, every Court must be deemed to possess inherent powers to do justice and to afford redress to a party who is wrongly injured by an order of Court. There is no doubt that the inherent powers of the High Court as well as of criminal Courts generally are wide but the powers so recognized by law are designed to meet only those cases for which there is no provision in the Code. Section 363, Criminal P. C., as already stated contains a clear prohibition against the alteration or review of a judgment except for the purpose of correcting clerical errors,

7. I have no doubt that the reopening of the order dated 20-2-1950, was unauthorized. The learned Magistrate in his explanation accepts that his action in passing a fresh order on 16-4-1950 was without jurisdiction. He justifies it only on the ground that the parties had come to an agreement before him and had settled the matter on the terms and conditions set out in the order.

8. It is obvious that a mere agreement between the parties regarding their future mode of conduct could not confer jurisdiction on the learned Magistrate to pass the order complained of if he did not possess it otherwise.

9. I accept the recommendation of the learned Additional Sessions Judge and set aside the order of Shri Farhat Ali dated 16-4-1950. The order of Shri Pradhan dated 20-2-1950 will now take effect.