

Ahmad Din vs Bijha Singh on 2 May, 1950

Equivalent citations: AIR1950ALL652

ORDER

Chandiramani, J.

1. This is an application under Section 561-A, Criminal P. C.

2. It appears that the applicant Ahmad Din obtained through the civil Court in execution of his decree a certain stall in Hazratganj. Thereafter one Rijha Singh, a refugee, gave an application to the District Magistrate, Lucknow, that this stall was his own and was not really the subject-matter of litigation, that severe damage had been caused to him and that there was an apprehension of a breach of the peace. It was prayed that proper inquiry be ordered into the matter and necessary action be taken against Ahmad Din and his associates and in the mean time the possession of the site together with the stall be restored to the applicant so that he may be able to resume his business and earn his livelihood. The City Magistrate of Lucknow, according to his own explanation, received this application in person from the District Magistrate. Thereupon he ordered the police of Hazratganj to look into the matter and report at once that very day. This order was passed on 28th November 1949. The report of the police was sent to the City Magistrate and on 29th November 1949, the following order was passed.

"S O. HAZARAT GANJ From this report it is clear that Ahmad Uddin has played a trick. He must immediately restore the stall to Rijha Singh. If he does not listen, I shall take it that he is bent upon doing a wrongful act likely to disturb the public tranquillity. In that case, the troublemaker should be prosecuted under Section 107/117, Criminal P. C., and in case of emergency he should be arrested under Section 151, Criminal P. C., and sent to me for bail. Along with that, a report under Section 145, Criminal P. C., can also be sent to me."

3. The applicant Ahmad Din complains against this order and says that it is entirely without jurisdiction, or, in any case, even if the Magistrate had jurisdiction, it is a clear abase of authority on his part and it should be set aside. On the other hand both the counsel for Rijha Singh and the learned Government Advocate urge that the order of the Magistrate was passed in his executive capacity and certainly not as a Court and in the circumstances Section 561-A, Criminal P. C., has no application. This contention of the learned Government Advocate is sound and must prevail. Section 561A, Criminal P. C., reads as follows:

"Nothing in this Code shall be deemed to limit of effect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the

ends of justice."

it is obvious from a reading of the section that the High Court will interfere it necessary when something contrary to law has been done by a subordinate Court. What we find in this case is an application or a sort of information addressed to the District Magistrate which when the City Magistrate visited the District Magistrate, was passed to him for an enquiry. It is to be noted that his was not transferred by the District Magistrate to the City Magistrate for disposal. No cognizance of any offence has been taken. The City Magistrate in his turn, because he was in charge of the city of Lucknow and because it was brought to his notice that the action of Ahmad Din had already caused a lot of excitement among the people and was likely to create a breach of the peace, expeditiously referred the matter to the police for a report and the report was required for the same day. The idea obviously was to see what was the real cause of the trouble and if any redress could be given by the executive authorities that might be given. It is significant that the orders passed by the City magistrate were addressed to the S. O.

4. The orders were something in the nature of advice or instructions as to what might happen if the action proposed by the City Magistrate were taken and advice not accepted by Ahmad Din. The order to the S. O., has already been reproduced in this judgment. Nowhere is there any sign that the action was taken by the City Magistrate as a Court. He was not satisfied that there was in fact any apprehension of a breach of the peace but he thought that if Ahmad Din did not take the advice offered to him, his refusal to take the advice might be interpreted as some act likely to cause a breach of the peace. Actually, no action has so far been taken against the applicant. I cannot possibly accept the contention of the learned counsel for the applicant that the order passed by the City Magistrate on 29th November 1949 was an order passed either in his capacity as a Court or in the course of judicial proceedings. In the course of judicial proceedings evidence on oath can legally be taken. It is to be noted that on the information supplied by Bijha Singh to the District Magistrate no cognizance has yet been taken in the sense that no action had been taken by any Court. In these circumstances whether the order passed by the City Magistrate in his executive capacity was proper or improper it is clear that this Court cannot treat it as an order of a Court and in the circumstances no interference is called for. The application is accordingly dismissed.