

# SUPREME COURT OF INDIA

S. S. Roy

Vs.

State of Orissa

Crl.A.No.93 of 1952

(B. K. Mukherjea, Vivian Bose and T. L. Venkatarama Ayyar, JJ.)

14.05.1954

## JUDGEMENT

### MUKHERJEA, J.

1. The appellant in this case, who was at the material time a 1st Class Magistrate of Cuttack, has been found, by the High Court of Orissa, to be guilty of contempt of the Court of the Additional Munsif of that place, by reason of his making an order, under S. 144 of the Criminal Procedure Code, by which a civil court peon was restrained from executing a warrant of arrest issued by the said Additional Munsif in connection with the execution of a money decree against one Hrudananda Sahu. The High Court has held that in purporting to make the order under S. 144, Criminal Procedure Code, the appellant misconceived his powers and did exercise a jurisdiction not vested in him by law. The High Court has also found that no circumstances existed which would justify the Magistrate in passing an order of that nature under S. 144 Criminal P. C. These findings are, in our opinion, well supported by the materials on the record and cannot possibly be challenged. The learned Judges of High Court, however, have expressly exonerated the appellant from the charge of being influenced by any extraneous consideration or dishonest motive in making the order. All that has been found against him is, that he acted in a negligent manner and without proper care and attention. In our opinion, on the facts found by the High Court, the appellant could not possibly be found guilty of contempt of court and punished accordingly. As has been said by the Privy Council in *Barton v. Field*, (1843) 4 Moo PCC 273, it is not sufficient in such cases for the purpose of visiting a Judicial Officer with the penal consequences of proceeding in contempt, simply because he committed an error of judgment or the order passed by him is in excess of authority vested in him. The error must be a wilful error proceeding from improper or corrupt motives in order that he may be punished for contempt of Court. On the facts found, the appellant can certainly be said to have acted without proper care and caution but there is nothing on the record to suggest any wilful culpability on his part and it has been expressly held by the learned Judges of the High Court that he was not actuated by any corrupt or dishonest motive. In these circumstances, we think that the order passed by the High Court cannot be supported. The appeal is accordingly allowed, the judgment of the High Court is set aside and the fine, if paid by the appellant, will be remitted.

2. We desire to state that we do not by any means approve of the conduct of the Magistrate but there is no justification, on the facts disclosed here, for a proceeding in contempt against him.

Appeal allowed.

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