

CALCUTTA HIGH COURT

Bishessur Chuckerbutty

Vs

Emperor

(Chitty and Walmsley, JJ.)

17.03.1916

JUDGMENT

Chitty, J.

1. In this case a Rule was issued calling on the District Magistrate to show cause why the order of the Deputy Magistrate passed under Section 144, Criminal Procedure Code, should not be set aside on grounds Nos. 1 and 3 in the petition mentioned. It would have been more correct had it been based on grounds Nos. 2 and 3. In this case the dispute is with regard to rival hats. The petitioners at the close of last year had started a rival hat on grounds belonging to themselves, which the Magistrate thought was likely to lead to a breach of the peace. He accordingly passed an order under Section 144, Criminal Procedure Code, on 18th December restraining them from holding a hat at that spot This order would have expired on 18th February 1916. The petitioners moved this Court towards the end of January, and we rejected the petition on the ground that the order of the Magistrate was about to expire, and that there was, therefore, no reason for an interference by this Court. This was our chief, if not only, ground for declining to interfere on that occasion. Before that order expired, the Magistrate proceeded to pass orders under the same section with regard to the new hat--the site of which the petitioners had shifted to other lands of their own. This order was passed on 13th January 1916 and expired a few days ago. We are asked to interfere with it on the ground that the Magistrate in this case is doing what this Court has held that a Magistrate should not do, namely, by successive orders under Section 144, Criminal Procedure Code, extending the period of two months which Clause (5) of that section prescribes. That the Magistrate has this object in view is clear from his orders in these cases. In passing the final order making the injunction absolute in this case on 16th February 1916, he noted "put up after two months." It is obvious that the Magistrate thought that his order dated from 16th February 1916, and that two months thereafter he might be in a position to pass a third order under this section. This is clearly improper. We need only refer to the case of *Satish Chandra Roy v. Emperor*¹ The Magistrate states that he has already-commenced proceedings against both the parties under Section 107, Criminal Procedure Code. This is obviously the right procedure to adopt: but we are at a loss to understand why the Magistrate thinks that proceedings under that section will take such a long time before final orders can be passed. We see no reason why those proceedings should not be expedited, and orders passed immediately, so as to prevent any further difficulties in respect of these rival hats. We think that the present order now under consideration ought not to have been passed, and we accordingly make the Rule absolute and set

it aside.

Cases Referred.

¹11 C.W.N. 79 : 4 Cr.L.J. 433