

## CALCUTTA HIGH COURT

Ratanlal Majumdar

Vs.

Alfred Ernest Young

Criminal Revn. No. 794 of 1958

(J.P. Mitter and S.K. Sen, JJ.)

01.09.1958

### JUDGMENT

#### **J.P. Mitter, J.**

1. This Rule is directed against an order made by the learned Sub-divisional Magistrate, Sadar (North) Midnapore under section 138 of the Indian Railways Act. The petitioner was a tea-stall contractor at Kolaghat Railway Station. By a notice dated the 9th March, 1955, the Railway administration purported to terminate the contract between the parties and asked the petitioner by that notice to quit the stall in question on the 7th July, 1955. The petitioner refused to obey the notice, whereupon the Railway administration moved the Sub-divisional Magistrate for an order under Section 138 of the Indian Railways Act.

2. Two points have been urged before us. The first point is that the notice to quit under Section 138 should be given only after a valid discharge of the Railway servant concerned. According to the petitioner, there was no valid termination of his contract. In our view, the question of the validity of the discharge is beside the point. If the petitioner felt that the contract between the parties had been wrongfully terminated or discharged, he had a remedy in a civil court. The remedy under section 138 of the Indian Railways Act is not dependent upon the validity or otherwise of the discharge or suspension of the Railway servant concerned. As to the notice of the 9th March, 1955, we would say that there was not only a notice terminating the contract between the parties with effect from 1st July, 1955, but there was also a notice to quit within the meaning of Section 138. As to the second point, viz., that the petitioner was not a Railway servant Sub-Section (2) of Section 148 of the Indian Railways Act is a complete answer. Mr. Ray contends that under Sub-Section (2) the petitioner's servant can be regarded as a Railway servant but not the petitioner himself. There is no substance in this contention. The meaning of Sub-Section (2) of Section 148 is plain and we have no doubt in our minds that the petitioner himself is a Railway servant within the meaning of Section 138 and Sub-Section (2) of Section 148 of the

Indian Railways Act.

3. As both the contentions fail, this application is dismissed and the relative Rule is discharged.

4. Let the records go down as early as possible.

**S. K. Sen, J.**

5. I agree.

Application dismissed.