

without some arrangement with the jailor to transfer it to that account, which had not been made. The prisoner was therefore entitled to his discharge.

MARKBY, J.—No doubt the section ought to be construed strictly, but I am of opinion that this application should be refused. Section 276 of Act VIII of 1859 says that sufficient subsistence-money must be paid to the jailor before the commencement of the month for which it is paid. The plaintiff in this case had paid sufficient money for the month of October into the hands of the jailor prior to the commencement of that month. It is in fact admitted that the jailor had, on the 30th September, sufficient money for the month of October. This being so, I do not think the prisoner is entitled to his discharge.

Attorneys for the prisoner : Messrs. *Ghose and Bose.*

1870

HALADHAR
DEY

v.

AMBIKA
CHARAN BOSE

Before Mr. Justice Loch and Mr. Justice Glover.

THE QUEEN *v.* RAI LACHMIPAT SING.*

Code of Criminal Procedure (Act XXV of 1861), s. 62—Prohibitory Order.

1870

July 9.

Under section 62 of the Code of Criminal Procedure, a Magistrate cannot pass a Prohibitory order, without having previously issued a rule to show cause why the order should not be passed.

This case was submitted, for the opinion of the High Court, by the Sessions Judge of Rungpore.

In the district of Bogra, a dispute arose between two zemindars, about two neighbouring *hàts*. A serious breach of the peace occurred, and a Deputy Magistrate investigated the case on the spot. The Magistrate of the district afterwards took up the matter, and bound down certain of the parties under recognizances to keep the peace. On the same day, without giving the parties any formal notice, or any opportunity of showing cause against the order, he passed an order, under section 62, directing that the market-day in one *hàt* should be changed.

The Magistrate's order was :—“ I direct, under section 62, Criminal Procedure Code, that a written order be served upon the defendants prohibiting them from holding the *hàt* at Muradpur on Mondays and Thursdays.”

In support of his opinion, that the Magistrate's order was illegal, the Sessions

* Reference, under section 434 of the Code of Criminal Procedure, by the Sessions Judge of Rungpore, in his letter No. 361, dated 17th June 1870.

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 PAT SING.

Judge cited *The Queen v. Kalika Prasad* (1), *In the matter of Hari Mohan Malo* (2), *The Queen v. Bhyro Dayal Singh and others* (3), and *In the matter of the petition of Kalidas, Bhuttacharjee* (4).

(1) *Before Mr. Justice L. S. Jackson and Mr. Justice Markby*

THE QUEEN v. KALIKA PRASAD

26th January 1869.

JACKSON, J.—It seems to me that we are not called upon to set aside the order of the Magistrate as being contrary to law. I think that the order made in this case was strictly with the provisions of section 64 of the Code of Criminal Procedure. The terms of this section have been made—extremely wide. They enable the Magistrate to direct any person to abstain from any act or to take certain order with certain property in his possession or under his management, whenever such Magistrate shall consider such direction is likely to prevent obstruction, annoyance or injury, or risk of obstruction, to any person lawfully employed, or is likely to prevent a riot or an affray. The Magistrate considered in this case (whether rightly or wrongly, we are not called upon to say) that the continuance of these two *hâts* held on the same day, upon adjacent pieces of ground, was certain to lead, as it had already led, to riots and affrays, and also to annoyance or injury to persons lawfully employed; and that, by directing the parties to abstain from holding the *hât* on the same day, he was likely to prevent those injurious results. It appears to me that it is precisely such a case as is contemplated by the section. Several cases have been cited to us, in which it is contended that the Judges have held an opposite opinion. The only case however precisely bearing on the present point is the case of *Sheeb Chunder Bhattacharjee v. Saadut Ally Khan* (a). We have not got the facts of that case before us; but so far as we can judge, the case was not precisely, on all fours, with the present. Mr. Justice Trevor observes:—"I am clearly of opinion that these words do not authorize a Magistrate to interfere with the exercise of any of his ordinary rights by a landholder, merely, because such exercise may require vigilance on the part of the Police, and may, in the absence of such vigilance, lead to an affray."

I suppose that the words used here are the words which the Magistrate employed in drawing up his order. It may very well be that the circumstances did not justify the order made on that particular occasion. As the present case is presented before us, it appears to me that the order is strictly within the Magistrate's competence.

MARKBY, J.—I am of the same opinion. Of course, no one would doubt that, in cases of this kind, a Magistrate ought to be most careful that he does not do more than is absolutely necessary, in order to preserve the peace, or to prevent the nuisance which is brought before him; but if it has been, as it was in this case, made out that, by the exercise of the strict legal rights of the parties, a breach of the peace has several times occurred, and the Magistrate is of opinion that, by the continuance of the parties to exercise those rights, further breaches will occur, I think he is perfectly justified in making such an order.

(2) 1 B. L. R., A. Cr., 20.

(3) 3 B. L. R., A. Cr., 4.

(4) *Before Mr. Justice Kemp and Mr. Justice Markby.*

IN THE MATTER OF THE PETITION OF KALIDAS BHUTTACHARJEE.

3rd August 1869.

KEMP, J.—This was a reference, under section 434 of the Code of Criminal Procedure by the Sessions Judge of the 24 Pargunnas, in a case in which he is of opinion that the order of the Cantonment Magistrate of Barrackpore is illegal, and ought to be quashed. It appears that in this case, Kalidas Bhuttacharjee petitioned the Magistrate that the defendant, Mahendranath Chuttupadhya, was erecting a wall, which obstructed the drain of his (the plaintiff's) house. His petition was presented on the 8th June, and Kalidas was examined briefly. He stated that the drain was an old one, and that Mahendranath, in erecting a wall, was obstructing that drain. The Magistrate directed the Police to stop the erection of the wall, and intimated his intention of visiting the

(a) 4 W. R., Cr., 12.