

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Maclean.

IN THE MATTER OF THE PETITION OF CHANDRAKANTA DE.*

1880
Nov. 9.

Penal Code (Act XLV of 1860), s. 188—Injunction in Civil Suit—Disobedience of Order.

Section 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party.

The proper remedy for disobedience of an order of injunction passed by a Civil Court, is committal for contempt.

THIS case was sent up to the High Court by the Sessions Judge of Mymensing, for an expression of opinion on an order passed by the Magistrate of Mymensing on 29th April 1880, dismissing a complaint against Girijakanta Lahory and others for an alleged offence under s. 188 of the Penal Code.

The circumstances which led to the order were as follows:—

On the 21st August 1879 the District Judge of Mymensing, on regular appeal, passed a decree, directing "Girijakanta Lahory, the appellant, to refrain from excluding, as joint sharer, one Tarinikanta Lahory from any portion of a tank (the subject of litigation between the parties), and both parties from taking or giving any person exclusive possession of any portion thereof without the consent of the other of them."

On the same date the District Judge passed another decree "directing Girijakanta Lahory to refrain from excluding Tarinikanta from possession of two plots as a joint sharer, and both parties from taking or giving to any other persons exclusive possession of either of the plots without the consent of the other of them." Subsequently to the passing of these decrees, Tarinikanta Lahory presented a petition to the District Judge, stating that Girijakanta Lahory had disobeyed the injunction, and had erected a hut on the land contiguous to the tank, asking for permission to prosecute Girijakanta under s. 188 of the Penal Code.

* Criminal Reference, No. 182 of 1880, from the order made by T. M. Kirkwood, Esq., Judge of Mymensing, dated the 2nd October 1880.

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This was granted ; and on the case coming up before the Magistrate on the 29th April 1880, he, without taking evidence as to the fact of the building of the hut, found that the order of injunction passed by the District Judge had not been promulgated, and expressed a doubt as to whether an order by a Civil Court was an order of a nature contemplated by s. 188 of the Penal Code, and therefore acquitted the accused under s. 211 of the Code of Criminal Procedure. The Sessions Judge disagreed with the view taken by the Magistrate, and referred the following points to the High Court for opinion :—

(i) Whether the Magistrate was right in holding that s. 188 of the Penal Code does not apply to disobedience of an order promulgated by a Civil Court ?

(ii) Whether the Magistrate was right in holding that the order had not been adequately promulgated ?

No one appeared for either party.

The opinion of the High Court (GARTH, C. J., and MACLEAN, J.) was given by

GARTH, C. J.—In our opinion s. 188 applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party ; so we think the Magistrate was right in refusing to act under the section.

If the defendant in the suit has disobeyed the injunction, the Judge ought, on the application of the plaintiff, to have sent him to jail for disobeying the Court's order ; that was the proper remedy.