

CRIMINAL REVISION.

Before Teunon and Ghose JJ.

LAKSHAN BOR

v.

NARA NARAIN HAZRAH.*

1921

March 10.

Appraisement—Application for appraisement of produce rent—Order prohibiting removal of paddy till appraisement—Disobedience of order—Applicability of s. 188 of the Penal Code and of Order XXXIX, r. 2, of the Civil Procedure Code—Power to direct prosecution under s. 188 for such disobedience—Bengal Tenancy Act (VIII of 1885), s. 69—Penal Code (Act XLV of 1860), s. 188—Civil Procedure Code (Act V of 1908), s. 141, & O. XXXIX, r. 2—Criminal Procedure Code (Act V of 1898), ss. 195, 476.

The primary purpose of orders under s. 69 of the Bengal Tenancy Act (Beng. Act VIII of 1885) is to prevent breaches of the peace, and the disobedience of a prohibitory order under cl. (3) falls within the provisions of s. 188 of the Penal Code.

The Subdivisional Magistrate is competent, as Collector, to act in such cases under s. 195 or s. 476 of the Criminal Procedure Code, and direct a prosecution for such disobedience.

The petitioners were *bhag* tenants under the opposite party, Nara Narain Hazra and others. The latter applied to the Subdivisional Magistrate of Contai, as Collector, under s. 69 of the Bengal Tenancy Act, for appraisement of the produce rent, and notices together with a prohibitory order under cl. (3) were issued upon the petitioners on 11th November 1919. They were alleged to have disobeyed the prohibition by removing the crops in question, and, on the 20th April 1920,

* Criminal Revision No. 3 of 1921, against the order of J. De, Subdivisional Officer at Midnapore, dated Dec. 17, 1920.

upon the application of the opposite party, the Magistrate called on the petitioners to show cause against their prosecution under s. 188 of the Penal Code. He ultimately, on the 10th September, ordered the prosecution of the petitioners under s. 476 of the Criminal Procedure Code, and sent the case to the second officer for disposal. The District Magistrate having refused to interfere, the petitioners moved the High Court and obtained the present Rule.

Babu Sitaram Banerjee, for the petitioners. Section 188 of the Penal Code does not apply to this case: *In the petition of Chandra Kanta De* (1). The proper remedy for the alleged breach is the procedure laid down in Order XXXIX, rule 2, read with s. 141 of the Civil Procedure Code. Refers to *Chandi Charan Giri v. Gadadhar Pradhan* (2).

TEUNON AND GHOSE JJ. In this case it appears that the Subdivisional Officer of Contai, as a Collector, acting under the provisions of section 69 of the Bengal Tenancy Act, sub-section (3), made an order prohibiting the removal of certain crops. The case against the petitioners is that they disobeyed the said order, and their prosecution under the provisions of section 188 of the Indian Penal Code has accordingly been directed.

The contention of the petitioners is that section 188 of the Indian Penal Code is not applicable to the facts alleged, and that they should be dealt with, if at all under the Code of Civil Procedure, Order XXXIX, rule 2.

In the case of *Chandi Charan Giri v. Gadadhar Pradhan* (2) it has been held that the proceedings of a Collector acting under the provisions of sections 69 and 70 of the Bengal Tenancy Act are of a civil nature.

(1) (1880) I. L. R. 6 Calc. 445.

(2) (1917) I. L. R. 45 Calc. 336.

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His Court is, therefore, one of civil jurisdiction, and in the absence of any special bar by virtue of section 141 of the Code of Civil Procedure the procedure provided in that Code would appear to become applicable. In support of the contention advanced on behalf of the petitioners, stress is then laid on the decision of this Court in *In the matter of the petition of Chandrakanta De* (1).

But, as is apparent from sub-section (2) of section 69 of the Bengal Tenancy Act, the primary purpose of orders made under that section is to prevent breaches of the peace; and we cannot suppose that for the sanction to such orders the Legislature intended to rely, or solely to rely, on the provisions of the Code of Civil Procedure. Without, therefore, seeking to lay down that the provisions of the Code of Civil Procedure, Order XXXIX, are inapplicable, we must hold that it is competent to the Collector in such cases to act under the provisions of section 195 or section 476 of the Code of Criminal Procedure, and to direct a prosecution under section 188 of the Indian Penal Code in respect of alleged disobedience to his order.

The Rule is accordingly discharged.

E. H. M.

Rule discharged.

(1) (1880) I. L. R. 6 Calc. 445.