

1920
 PIGOT
 v.
 ALI
 MAHAMMAD
 MANDAL.

The distribution will be made rateably in proportion to the number of trees on each holding; but this will not affect the right of tenants *inter se* to have the question of apportionment amongst themselves decided by a Civil Court.

FLETCHER J. I agree.

CHATTERJEA J. I agree.

RICHARDSON J. I agree.

GHOSE J. I agree.

E. H. M.

Rule absolute.

CRIMINAL REVISION.

Before Chatterjea and Cuming JJ.

RASH BEHARI SAHA

v.

PHANI BHUSAN HALDAR.*

1920
 Aug. 9.

Practice—Application to the High Court to revise a proceeding under s. 133, Criminal Procedure Code, without moving the Judge in the first instance—Criminal Procedure Code (Act V of 1898) ss. 435, 438, 439.

It is not the practice of the High Court to entertain an application in revision against an order made by a Magistrate in a proceeding under s. 133 of the Criminal Procedure Code, unless the party aggrieved has first moved the Sessions Judge under ss. 435 and 438.

ON the 23rd December 1919, the Subdivisional Officer of Satkhira drew up a proceeding under s. 133 of the Code, and issued a conditional order on the opposite party, Phani Bhusan Haldar and others; to remove

* Criminal Revision No 623 of 1920, against the order of A. R. Basu, Subdivisional Magistrate of Satkhira, dated May 6, 1920.

the obstruction caused by them on a pathway, alleged to be a public pathway, in village Dhandia. They appeared and claimed the pathway as a private one, and offered to construct a new road for the use of the public over land said to be their own. The Magistrate, after calling for a report from the Local Board Overseer and hearing the opposite party, dropped the proceedings, on the 6th May 1920, refusing the petitioner's application to take evidence as to whether the disputed pathway was a public or a private one. The latter thereupon obtained the present Rule to set aside the order.

1920
 RASHI
 BEHARI
 SAHA
 v.
 PHANI
 BHUSAN
 HALDAR

Babu Khatish Chandra Chakravarti, for the opposite party, raised a preliminary objection. Under s. 435 of the Code the Sessions Judge and the High Court have concurrent jurisdiction in the case, and the petitioner ought to have moved the former in the first instance: *Queen-Empress v. Reolah* (1), *Emperor v. Abdus Sobhan* (2).

Babu Indu Bhusan Roy, for the petitioner. The High Court has power to interfere under s. 439, and has done so directly: *Peary Lall Mullick v. Surendra Krishna Mitter* (3).

CHATTERJEA AND CUMING JJ. We think that the petitioners must first of all move the Sessions Judge under section 435, and ask him to exercise his powers under section 438.

It is not the practice of this Court to entertain applications of this nature, unless the party has first moved the Sessions Judge to make a reference to this Court.

The Rule is discharged on the above ground.

E. H. M.

Rule discharged.

(1) (1887) I. L. R. 14 Calc. 887. (2) (1909) I. L. R. 36 Calc. 643.

(3) (1919) 23 C. W. N. 774.