their case to make such application to the Magistrate as they may be advised.

In conclusion we desire to add that, as far as possible, the proceedings before the Chief Presidency Magistrate should be continued from day to day and completed with all possible despatch. Let this order be sent down at once.

E. H. M.

CRIMINAL REVISION.

Before Teunon and Suhrawardy JJ.

BHUBAN CHANDRA HAZRA
v.
NIBARAN CHANDRA SANTRA.*

1921

May 26.

Judgment—Judgment in a case under s. 145, Criminal Procedure Code—Omission to record reasons for decision—Criminal Procedure Code (Act V of 1898) ss. 145, 366 and 367.

Whether ss. 366 and 371 of the Criminal Procedure Code do or do not apply to an order under s. 145, the Magistrate must give reasons for his decision sufficient to enable the High Court to determine whether he has complied with the terms of sub-section (4) and directed his mind to the consideration of the evidence, and whether he has acted with jurisdiction in making his final order.

A final order merely stating that a certain number of witnesses were examined, pleaders heard and the oral and documentary evidence considered in the light of the arguments, is not a proper one. Re-trial ordered.

On the 23rd December 1920, the sub-inspector of Domjur, in the district of Howrah, submitted a report to the Subdivisional Magistrate of Howrah alleging the likelihood of a breach of the peace, whereupon the Magistrate drew up a proceeding, the next

*Criminal Revision No. 281 of 1921 against order of F. C. Chatterjee, Subdivisional Magistrate of Howrah, dated Jan. 26, 1921.

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day, between Nibaran Chandra Santra as the first party and Bhuban Chandra Santra, as the second party. He held an enquiry and passed a final order (on the 26th January 1921) substantially to the effect stated in the judgment of the High Court.

Bhuban Chandra then obtained the present Rule on the ground that the judgment was not in accordance with law.

Babu Hiralal Chakravarty showed cause for the opposite party. Section 145 is self complete as to procedure and order. The recording of reasons is not necessary thereunder. The order need only declare the possession of a party until eviction Ss. 366 and 367 do not apply: see *Kalu Mirza* v. *Emperor* (1).

Babu Atulya Charan Bose, (with him *Babu Hari Charan Ganguly* and *Babu Manomohan Bose*,) for the petitioner. Section 145 lays down the procedure only. The judgment in the case is governed by s. 367. The first part of the latter section is quite general and is not limited to offences: *Parbati Charan Roy* v. *Sajjad Ahmad Chowdhury* (2).

TEUNON AND SUHRAWARDY JJ. This Rule arises out of proceedings taken under the provisions of section 145 of the Criminal Procedure Code. The Rule was issued because it appeared to the Court that in his final order the trial Magistrate did not sufficiently set out the reasons which had led him to his decision.

It is contended on behalf of the opposite party that sections 366 and 367 of the Code of Criminal Procedure do not in terms apply to proceedings under section 145, and in support of this contention reference has been made to the case of *Kalu Mirza* v. *Emperor* (1). Whether the sections cited do or do not

(1) (1909) I. L. R. 37 Calc. 91. (2) (1908) I. L. R. 35 Calc. 350.

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apply to proceedings under section 145 of the Criminal Procedure Code, we have no doubt that we are entitled to require from the trial Magistrate a statement of the reasons for his decision sufficient to enable us to determine whether he has or has not complied with sub-section (*4*) of section 145, Criminal Procedure Code, and directed his mind to the consideration of the effect of the evidence adduced before him. Without such statement of reasons it is impossible for us to determine whether the Magistrate in making his final order has acted within or without his jurisdiction. The statement of reasons in the present case, which is merely to this effect—that five witnesses had been examined, that the learned pleaders had been heard and that the oral and documentary evidence of both parties had been considered in the light of the arguments addressed to the Court,—is of a stereotyped nature applicable to any and every case, and obviously does not enable us to understand what in fact the evidence was or to say that the mind of the trying Magistrate had been properly and sufficiently directed to its consideration.

We, therefore, set aside the final order made by the Magistrate on the 26th January, and direct that the case be re-opened at the point reached on that date, and that, after hearing the parties afresh, and after recording a statement of the reasons for his decision such as we have already indicated, the learned Magistrate do dispose of the matter in accordance with law.

E. H. M.