

CRIMINAL REVISION.*Before Subramany and Dural JJ.*

RAM CHANDRA ACHARJEE

v.

ADITYA CHANDRA PAL.*

1926

April 23.

User, right of—Dispute as to right of user of land—Application by a party for the institution of proceedings—Date of institution—Jurisdiction of Magistrate to institute proceedings when alleged right not exercised within three months from the date of the initiatory order—Criminal Procedure Code (Act V of 1898), s. 147, proviso to sub-section (2).

The enquiry under s. 147 of the Criminal Procedure Code is instituted, within the proviso to sub-section (2), on the date of the drawing up of the initiatory order under the section, and not when the Magistrate, on receipt of the petition for proceedings thereunder, directs the police to enquire and report. He has no jurisdiction to institute proceedings when the right claimed by the applicant has not been exercised within three months next before the date of the initiatory order.

On the 14th February 1925 the first party, Aditya Chandra Pal, filed a petition before the Subdivisional Officer of Madaripur alleging that he and other potters had a right of way through the compound of the petitioner, Ram Chandra Acharjee, and that the latter had obstructed the pathway by erecting a cow-shed, and that there was an apprehension of a breach of the peace in consequence. On the 16th instant, the Magistrate directed the police to enquire and report by the 5th March, but the report was not submitted till the

* Criminal Revision No. 148 of 1926 against the order of N. Edgley, Sessions Judge of Faridpur, dated Jan. 26, 1926.

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26th May. Notice was issued to the petitioner, on the 14th July, to show cause, on the 3rd August, why proceedings under section 107 of the Code should not be taken against him. The matter was postponed, on the 3rd August, to the 20th. On the latter date the Magistrate drew up a proceeding under section 147, making Aditya Chandra the first party and the petitioner the second party. After enquiry, the Magistrate found, on the 29th October, that the right of way claimed by the first party existed, and he passed an order prohibiting the second party from interfering with such right. A motion against the order was dismissed by the Sessions Judge of Faridpur on the 16th December. The petitioner then obtained the present rule.

Babu Jahnabi Charan Das Gupta, for the first party. The proceeding was instituted on the 16th February when the Magistrate directed the police to enquire and report, and not on the 20th August when the order under section 147 was drawn up. The first party moved the Magistrate in time; he was not responsible for the delay in drawing up the order.

Babu Suresh Chandra Taluqdar (with him *Babu Kalyan Kumar Das Gupta*). The scheme of section 147 shows that the proceedings commence with the order in writing mentioned in sub-section (1). The proceedings are instituted when the order is drawn up, and not when enquiry and report by the police is directed.

SUHWARDY AND DUVAL JJ. This Rule was issued against an order passed by the Deputy Magistrate of Faridpur, under section 147 of the Criminal Procedure Code, on two grounds—(1) that the learned Magistrate acted without jurisdiction in drawing up proceedings under section 147 of the Criminal Procedure Code after having ordered issue of notice upon the second

party under section 107 of the Criminal Procedure Code; (ii) that the learned Magistrate acted without jurisdiction in drawing up a proceeding under section 147 of the Criminal Procedure Code because more than three months had expired between the date of the alleged obstruction on the 14th February 1925 and the date of the institution of the proceeding on the 3rd August 1925. We have heard the parties on the second ground mentioned above as, if that is decided in favour of the petitioner, it will not be necessary to enquire into the first ground. A petition was filed by the first party on the 14th February, complaining of obstruction of a pathway by the second party. On the 16th February 1925 on that petition the Magistrate passed the following order: "To elaka police for enquiry and report by the 5th March 1925." The report by the police was submitted on the 26th May 1925. On the 14th July the Magistrate passed the following order on the body of the petition: "Issue notice on Ram Chandra Acharjee to show cause why he should not be dealt with under section 107 of the Criminal Procedure Code. Fix 3rd August." On the 3rd August the following order was recorded: "Issue the notice ordered on 14th July. Fix 20th August." On the 20th August the order passed was: "Heard parties and seen documents. Draw proceedings under section 147 of the Criminal Procedure Code, fixing 7th September." The case was subsequently transferred to another Magistrate who recorded the evidence and passed an order, on the 29th October 1925, prohibiting the second party to interfere with the exercise of the right claimed by the first party under section 147 of the Criminal Procedure Code. Against this order an application was made to the Sessions Judge of Faridpur who declined to interfere. It appears that the only ground which was urged before the learned Sessions

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Judge was that the proceedings started on the 20th August were without jurisdiction, inasmuch as more than three months had elapsed from the date of the obstruction. The learned Judge was of opinion that the enquiry was really instituted on the 16th February (the date on which the Magistrate ordered the police to enquire into the matter) "although formal proceedings were not drawn up with regard to this matter till the 20th August 1925." The same view has been urged before us by the learned Vakil who appears for the first party. It is argued that the enquiry was as a matter of fact instituted when the Magistrate passed an order upon the police to report. We are unable to accept this contention. The first paragraph of section 147 of the Criminal Procedure Code says that whenever any District Magistrate (or Magistrate) of the first class is satisfied that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court . . . and to put in a written statement of their respective claims, and shall thereafter enquire into the matter in the manner provided in section 145. The proviso to the second paragraph says that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the enquiry. The question that falls for determination relates to the meaning of the words "institution of the enquiry". It is contended that the order passed by the Magistrate on the 16th February, asking the police to enquire and report, must be taken as institution of the enquiry under the proviso. It seems to us that the order that was passed on the 16th February was upon the police to

satisfy itself and report not with regard to the alleged rights of the parties, but apparently with regard to the existence of a dispute likely to cause a breach of the peace, because in drawing up proceedings the Magistrate has to state his reasons for holding that a likelihood of a breach of the peace exists; and for that purpose it is usual, on petitions of this nature, to order the "police to enquire whether there exists a likelihood of the breach of the peace," and it is on the report of the police that such likelihood exists that the Magistrate obtains jurisdiction to start proceedings under section 147 of the Criminal Procedure Code. Then, again, the word "enquiry" in the proviso has reference to the words "enquire into the matter" in the first paragraph. The enquiry that is contemplated there is enquiry by the Magistrate, and not enquiry by the police. Institution of the enquiry into the existence of the likelihood of breach of the peace must precede the enquiry into the respective rights of the parties, and the Magisterial enquiry is instituted when proceedings are drawn up by the Court under section 147. It must, therefore, be held, in the circumstances of this case, that the enquiry was instituted on the 20th August 1925. The obstruction complained of having taken place on the 14th February, long before three months from the date when proceedings were drawn up, it must be held that the Magistrate had no jurisdiction to proceed under section 147 of the Criminal Procedure Code. In this view the Rule must be made absolute, and the order of the Magistrate of the 29th October 1925 set aside.

E. H. M.

Rule absolute.

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