CRIMINAL REVISION.

Before Suhrawardy and Costello JJ.

ANADILAL MUKHERJI

v.

SUKHCHAND MANDAL.*

1930

May 9.

Breach of peace—Scope of s. 145 (1) of the Code of Criminal Procedure (Act V of 1898).

It is necessary for the making of an order under section 145, clause (*1*) of the Code of Criminal Procedure that the magistrate should be satisfied at the time of drawing up the proceedings that there is *then* existing a likelihood of the breach of the peace. The making of an order six months after the report of the police on which it purported to be based is bad.

Re : Nallanna Goundan (1) and *Chhedi Lal Marwari* v. *Mahabir Prasad Sukul* (2) referred to.

CRIMINAL RULE obtained by Anadilal Mukherji and others, 2nd party.

The material facts appear from the judgment of the Court.

Narendrakumar Basu (with him *Nalinchandra Pal*) for the petitioners.

K. N. Chaudhuri (with him *Anilendranath Ray Chaudhuri*) for the opposite party.

COSTELLO J. This is an application under section 439 of the Criminal Procedure Code in respect of an order made by the Subdivisional Magistrate of Satkhira on the 22nd December, 1928, under the provisions of section 145 of that Code. The proceedings, which eventually resulted in making that order, were protracted to a most remarkable extent. For it appears that the proceedings, out of which the order finally emerged, began by a report made by the police to the magistrate in question on the 18th

*Criminal Revision, No. 788 of 1929, against the order of H. Basu, Additional Sessions Judge of Khulna, dated May 21, 1929, confirming the order of K. Mitra, Subdivisional Magistrate, Satkhira, dated Dec. 22, 1928.

(1) 2 Cr. L. Rev. 85.

(2) (1921) 2 Pat. L. T. 650; 64 Ind. Cas. 507.

January of the year 1926, when he reported that there was a likelihood of trouble between the contending parties who were disputing possession to a certain plot of land. Actually before that date, some of the parties had been brought before a court for the purpose of being bound over under the terms of section 107 of the Code of Criminal Procedure. These proceedings ultimately terminated; but apparently nothing more was done in respect of the proceedings under section 145 until the 9th June, 1926 when they were dropped and fresh proceedings, with amended boundaries with regard to the properties, were drawn up on the 27th July, 1926, and the lands in dispute were then attached. The matter, as I have said, dragged on from that date until December 1928. The real question which we have to decide is, whether or not the learned magistrate was right in drawing up proceedings in July, 1926, which purported to be based on the police report of January, 1926, and upon nothing else.

It has been urged before us that it cannot rightly be said that in July, 1926, there was a likelihood of a breach of the peace between the contesting parties by reason of the situation as it had previously existed in January, 1926. We are not concerned with the question of the subsequent delay as between July, 1926, and December, 1928. But one cannot help remarking in passing that this proceeding seems to have taken a course which never could have been contemplated by the terms of section 145, which, after all, are designed to secure that a *status quo* should be preserved and a breach of the peace prevented as between the two disputing parties or sets of disputing parties pending the time one side or the other should have recourse to a civil court, in order that their rights with regard to the land might be finally determined. It is to be borne in mind that by section 145, sub-section (*1*), the magistrate of the class, therein referred to, is to make an order in writing if he is satisfied that a dispute likely to cause

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a breach of the peace exists, concerning any land or water or the boundaries thereof. The condition precedent for making an order of the kind contemplated is that a breach of the peace is likely. The meaning of the word "likely" has been considered in a number of reported cases and on the whole the decisions indicate, I think, that the word "likely" indicates some degree of futurity, though it has been said that the word "likely" does not mean imminent or immediately to happen. We may take it for the purpose of this section that the word "likely" is to be treated as if it is synonymous with the word "probable." In the present instance, the police reported, as far back as January, 1926, that a breach of the peace was then likely or anticipated, if no steps were taken and the matter was recorded by the magistrate as one of emergency,—in other words it was considered in January, 1926, that the matter was urgent. So that the position was that, in January, 1926, a dispute likely to cause a breach of the peace existed. I use the word "existed" advisedly, because the word in the section is "exists." That means that there must be a dispute in existence which is likely to cause a breach of the peace at the time when the order is made. Now there is nothing to show that the state of affairs which "existed" in January, 1926, still existed in July, 1926, so far as it appears from the order which the magistrate made some two years later. We, therefore, think, from the actual wording of the section itself, that the making of an order, some months after the report on which it was purported to be passed, cannot be supported. There are authorities for that view in cases, which unfortunately we have not had the advantage of seeing, because the reports in which they appear are not available. Apparently it was held in *Re: Nallanna Goundan* (1), which is cited in Aiyar's Book of Criminal Procedure Code, that if the circumstance was that there was danger in the past, proceedings based on a likelihood of a breach of the peace six months previous to the date of the

(1) 2 Cr. L. Rev. 85.

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preliminary order would be illegal. There is also another case, *Chhedi Lal Marwari* v. *Mahabir Prasad Sukul* (1), where it appears to have been decided that proceedings cannot be started on the basis of a police report more than three months old, there being no likelihood of a breach of the peace, when the magistrate actually drew up the proceedings. Now that seems to me to be a reasonable interpretation to be put upon the terms of the section. It is necessary for making an order of this description that the magistrate should be satisfied at the time of drawing up the proceedings that there is *then* existing a likelihood of breach of the peace arising from the disputes between the parties with regard to the land in question.

Taking that view of the matter, we think that this order of the magistrate must be set aside. That will be without prejudice to the making of any fresh order, if this or any other magistrate is satisfied that there is a likelihood of any breach of the peace existing at the time when the matter comes before him. The Rule is made absolute in these terms.

SUHRAWARDY J. I agree.

Rule absolute.

A. C. R. C.

(1) (1921) 2 Pat. L. T. 650 ; 64 Ind. Cas. 507.