

CRIMINAL REVISION.

Before Mukerji and Jack J.J.

JAMIR SHEIKH

v.

MURARIMOHAN CHAUDHURI.*

1929
Aug. 1.

Transfer—Granting of adjournment, if obligatory in a proceeding under section 145, Cr. P. C.—Code of Criminal Procedure (Act V of 1898), ss. 526(8), 145.

Section 526, clause (8) of the Code of Criminal Procedure, does not include proceedings under section 145 of the Code. Consequently, in such proceedings, it is not obligatory on the magistrate to grant an adjournment on receipt of an application filed by the petitioner, intimating to him that an application for transfer will be made and asking him to adjourn the case for that purpose.

RULE obtained by the second party in a proceeding under section 145 of the Code of Criminal Procedure.

On the 10th October, 1928, a proceeding under section 145 of the Criminal Procedure Code was drawn with Murarimohan Chaudhuri and others as the first party and Jamir Sheikh and others as the second party, with regard to some lands which were also attached. The case for the first party was that the lands were purchased in an auction-sale by the father of Murarimohan and subsequently settled in *bhâg* by him with several persons. The first party claimed to be in possession since 1332 B. S. The second party also claimed to be in possession and their case was that the lands belonged to one Ijratan Bibi, the *nikâ* married wife of Jamir Sheikh. After several adjournments, the examination of the witnesses for the first party was finished on the 5th January, 1929. On none of these dates, any witness for the second party was present. Another adjournment was granted and, on the 25th January, the second party made an application under section 526 of the Criminal Procedure Code for an adjournment to move the High Court for transfer. The learned Magistrate rejected

*Criminal Revision, No. 412 of 1929, against the order of Surendra Mohon Bhoumik, Sub-Divisional Magistrate of Katwa, dated Jan. 25, 1929.

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that prayer and decided the case, declaring the first party to be entitled to possession. The second party obtained the present Rule against that order.

Mr. Mrityunjay Chattopadhyaya (with him *Mr. Debabrata Mukherji*), for the petitioners. The amendment of clause (8) of section 526 of the Code of Criminal Procedure, substituting the words "any enquiry or trial" for the words "any criminal case or appeal" goes to show that the intention of the legislature must have been to apply the provision regarding compulsory adjournment applicable to an enquiry under section 145 of the Code. If there were any intention to exclude such proceedings, the legislature would have said "any enquiry other than that under chapter XII" or some such thing. The words, "The Public Prosecutor, the complainant or the accused" retained after the amendment of 1923, should not be strictly construed, as that would go against the spirit of the amendment. These words seem to have been retained by way of description and include the parties to a section 145 proceeding. To hold otherwise would render the amendment and the use of the word "enquiry" meaningless.

Mr. Sureshchandra Talukdar (with him *Mr. Sudhanshushekhar Mukherji*), for the opposite party, was not called upon to reply.

MUKERJI AND JACK JJ. The question raised in this Rule is whether clause (8) of section 526 of the Criminal Procedure Code applies to proceedings under section 145 of that Code. The words in clause (8), as they stood before the amendment of 1923, were: "If in any criminal case or appeal, before the commencement of the hearing *etc., etc.*" By the amendment aforesaid, these words have been altered into "If in the course of any enquiry or trial or before the commencement of the hearing of any appeal, *etc., etc.*" The introduction of the word "enquiry" in place of the words "any criminal case" may ordinarily be taken to have been intended for the purpose of including proceedings under section 145

of the Code of Criminal Procedure, but the rest of the clause, if read properly, would militate against this view. Proceedings under section 145 are no doubt proceedings by way of enquiry. But then, the words of clause (8) of section 526, such as "the complainant," "the accused" and perhaps also the word "Public Prosecutor," would be wholly inapposite in connection with proceedings under section 145 of the Criminal Procedure Code. The parties to proceedings under section 145 are described as parties in that section and the use of the words "complainant," "accused" and perhaps also the word "Public Prosecutor" and the non-mention of the word "party" in the latter part of clause (8) make it perfectly clear that it was not the intention of the legislature to include proceedings under section 145 of the Criminal Procedure Code within the meaning of that clause. For this reason, we are of opinion that the contention that has been urged on behalf of the petitioner, which is to the effect that it was obligatory on the learned Magistrate to grant an adjournment on receipt of the application filed by the petitioner intimating to him that an application would be made for transfer under section 526 and asking him to adjourn the case for that purpose, should be overruled, and the rejection of that application cannot be held to have been in violation of the provisions of Code. Apart from clause (8) of section 526, the petitioner had no case whatsoever, because in the application that was made, asking for an adjournment, to enable the petitioner to move this Court for transfer, no ground whatsoever was stated; and also because the said application was made at a very late stage of the proceedings, after the evidence on behalf of the opposite party, which had been taken on two different dates, was closed. We are of opinion that there is no substance in this Rule. It is accordingly discharged.

Rule discharged.