

## CRIMINAL REVISION.

Before Pearson and Mallik JJ.

DIGINDRABIHARI RAY

v

JANAKINATH RAY.\*

1929

May 30.

*Attachment—Alluvial lands—Attachment under section 145, Cr. P. C., stay of—Bengal Alluvial Lands Act (Beng. V of 1920), ss. 3, 10—Code of Criminal Procedure (Act V of 1898), s. 145, cl. 5.*

The provisions of section 10 of the Bengal Alluvial Lands Act are wide enough to apply to all proceedings, including attachment, that may have been taken under section 145 of the Code of Criminal Procedure.

Where lands have already been attached under section 145 of the Code of Criminal Procedure, a subsequent attachment of the same lands under the Bengal Alluvial Lands Act after the cancellation or stay of the previous order is legal.

*Tara Charan Sarkar v. Bengal Coal Co., Ltd.* (1) and *Banada Ranjan Bhattacharja v. Bharat Chandra Shama* (2) distinguished.

RULE obtained by DigindrabiHari Ray and others, 2nd party, against an order releasing the lands in question from attachment under section 145 of the Code of Criminal Procedure, to be attached under the Bengal Alluvial Lands Act, the next day.

Certain extensive *chars* were formed in the river, which the 2nd party petitioners, known as *Maijpara Babus*, claimed as the reformation *in situ* of portions of their two contiguous *mouzas*, Kachikata and Khalpar Bharsimal, Nos. 62 and 61 respectively, of which they were the sixteen annas proprietors. The 1st party, the *Bhagyakul Babus*, claimed these as their lands and in their possession. After certain investigations by the *khas mehal amins* and police officers, a proceeding under section 145 of the Code of Criminal Procedure was drawn up on the 8th October, 1928, and about 7,000 *bighas* of land were

\*Criminal Revision, Nos. 468 and 469 of 1929, against the order of S. Sen, Sessions Judge of Faridpur, dated Feb. 11, 1929, confirming the order of A. C. Chatterjee, Subdivisional Magistrate of Sadar Faridpur, dated Jan. 9, 1929.

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attached thereunder. On an application of the 1st party, further investigation followed and, after a local enquiry by the Subdivisional Magistrate, the lands were ordered to be released from attachment on the 9th January, 1929, in order that they might be attached under the Bengal Alluvial Lands Act on the following day. An application by the 2nd party against the said order was rejected by the Sessions Judge of Faridpur on the 11th February, 1929. The 2nd party thereupon obtained this Rule.

*Mr. Gregory, Mr. Sureshchandra Talukdar and Mr. Kiranmohan Sarkar, for the petitioners.*

*Mr. Narendrakumar Basu, and Mr. Pashupati Ghosh, for the opposite party, in Criminal Revision No. 468 of 1929.*

*Mr. R. K. Ray and Mr. Pashupati Ghosh, for the opposite party, in Criminal Revision No. 469 of 1929.*

PEARSON AND MALLIK JJ. These two Rules relate to two orders, one of which is dated the 9th of January, 1929, and the other dated the 10th of January, 1929, relating to a considerable area of *char* lands. These lands became the subject matter of proceedings under section 145 of the Code of Criminal Procedure some months previously. The proceedings were drawn up about the beginning of October and at the time of the proceedings being initiated an attachment order was made against the lands. Various steps were taken in those proceedings up to the beginning of January, 1929, and, on the 9th January, the magistrate passed an order, after reviewing the situation at some length, as a result of which he directed that the lands should be released from the attachment made in the section 145 proceedings and decided to replace those proceedings with others under the Bengal Alluvial Lands Act, 1920 (Beng. V of 1920). The way he puts it is this: "The land is released from attachment under section 145, Criminal Procedure Code. It will be

attached under the Alluvial Lands Act to-morrow." On the following day proceedings under the Bengal Alluvial Lands Act were instituted and an attachment was made.

The grounds which have been urged on the present Rules are that the order of the magistrate, staying proceedings under section 145 and removing the attachment, is an illegal order, which he had no power to make and which is not warranted by any of the provisions of section 145. The contention is that, under section 145, sub-section (5), there is only one method provided by law by which an order under section 145 can be cancelled and that is where any party or any other person interested has shown that, in point of fact, there is no dispute which exists and, in such a case, as the section says, the magistrate shall cancel his said order and shall stay all further proceedings, but, subject to such cancellation, the order of the magistrate, under sub-section (1), shall be final. Reference has been made to the case of *Tara Charan Sarkar v. Bengal Coal Co., Ltd.* (1), where the question was whether, under certain circumstances, proceedings under section 145 could be quashed and it was held that the magistrate could only quash the proceedings in accordance with the provisions of sub-section (5) of section 145, on facts being brought to his notice which were sufficient to satisfy him that no dispute likely to cause a breach of the peace existed. Another case to the same effect, namely, the case of *Ranada Ranjan Bhattacharja v. Bharat Chandra Shama* (2), was referred to. But the question raised in that case is entirely different to that which arises in this present case. There, the question concerned the procedure as to the correct method of disposal of the proceedings under section 145, where the question arises in those proceedings themselves. There was no question, as it is here, of the method of disposal of the proceedings, in a case where, as in the present, the alternative method of procedure has been laid down by another statute. At

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(1) (1908) 13 C. W. N. 125.

(2) (1920) 25 C. W. N. 215.

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the time of the cases, to which we have just referred the Bengal Alluvial Lands Act, 1920, had not yet been passed. It is, therefore, necessary to decide the present case upon a consideration of the provisions of that statute. In the preamble of that Act, it is stated that, "previous sanction of the Governor-General has been obtained, under section 79, "sub-section (2), of the Government of India Act, "1915," and the Statute is directed towards making provisions to prevent disputes with regard to possession of alluvial or derelict lands in Bengal. Section 3 of the Act confers power on the Collector to attach lands of this nature and provides a procedure, which is in some way analogous to the procedure already existing under section 145. The Collector has power to make any attachment of alluvial lands and then to refer the matter to a civil court, besides the power of giving certain directions as to costs. Section 10 of Act is an important one for our present purposes. It provides that when the Collector has attached any alluvial land under section 3, no proceedings under section 145 of the Code of Criminal Procedure, 1898, shall be instituted in any court in respect of the same land or of any part thereof and that any such proceedings already commenced and pending in any such court shall be stayed. It has been contended that that section is intended to apply to the proceedings under section 145 so far as their institution or carrying on is concerned and not to the attachment order which may be made under section 145, and that once an attachment order has been made in a proceeding under section 145, section 10 of the Bengal Alluvial Lands Act of 1920 confers no right upon the Collector to make a further attachment under the powers under that Act. The answer to that contention, we think, is that it introduces a limitation upon the general words in the section itself, which is not to be found there. Moreover, it is to be remembered that in most if not all, of the cases which are instituted under section 145 of the Code of Criminal Procedure, this order of attachment is commonly made at the time of

the institution of the proceedings. If the contention were sound, it would result in nullifying the provisions of the Bengal Alluvial Lands Act of 1920. The position, in our opinion, is that the provisions of section 10 are certainly wide enough to apply to all proceedings, including an attachment, that may have been had under section 145. The result, therefore, is, as regards these two orders of the 9th and 10th of January, that, assuming that the order of the 9th of January, was not strictly correct in that the proceedings under the Bengal Alluvial Lands Act should have been instituted first, it is not a matter of substance in the present case, because, if the order were wrong and if the proceeding under section 145 had been allowed to continue and a proceeding had then been instituted under the Bengal Alluvial Lands Act, the effect of section 10 of that Act would be to stay the earlier proceedings. The Rules are, therefore, discharged. Let the record be sent down at once.

A.C.R.C.

*Rules discharged.*

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