

1918

EMPEROR
v.
GAURI
SHANKAR.

Regarding it, however, as a case standing very much upon the border line, and accepting, as we do, the conclusion that the intention was not to cause the death of either of the boys, we do not think it necessary in this case to pass the severer sentence provided by law. We so far accept the appeal of Gauri Shankar that we set aside the sentence of death passed upon him, but affirm his conviction. We direct that he undergo transportation for life with effect from the 2nd of January, 1918, the date of his conviction in the Sessions Court.

Sentence modified.

REVISIONAL CRIMINAL.

1918
January, 28.

Before Mr. Justice Walsh.

SUNDAR NATH v. BARANA NATH.*

Criminal Procedure Code, section 145—Government of India Act, 1915, section 107—Order under section 145 of the Code of Criminal Procedure made by a magistrate duly empowered to act under Chapter XII of the Code—Revision—Jurisdiction of High Court.

When proceedings are in intention, in form and in fact proceedings under Chapter XII of the Code of Criminal Procedure, and are taken by a magistrate duly empowered to act under that chapter, the High Court has no power to send for the record of those proceedings, either under the Code of Criminal Procedure or under the Government of India Act, 1915. *Malukdhari Singh v. Jaisri* (1) followed. It is, however, open to a party in such a case to satisfy the High Court that property of which he is entitled to possession has been dealt with by an order which has no legal authority at all, and he may do so by an affidavit or in any other reliable manner, and thereby invoke the superintending power of the court.

This was an application in revision from an order passed under chapter XII of the Code of Criminal Procedure by a magistrate of the first class. The magistrate found that a dispute likely to cause a breach of the peace existed in respect of certain immovable property belonging to a *math*, between two rival claimants to the *gaddi*, Sundar Nath and Barana Nath. After a lengthy inquiry he came to the following finding :—

“After considering all the evidence on the record, I am unable to satisfy myself whether any and which of them (the claimants) was in possession of the whole subject of dispute, and it has

* Criminal Revision No. 83 of 1918, from an order of Bisheshwari Prasad, Magistrate, First Class, of Gorakhpur, dated the 2nd of January, 1918.

(1) (1917) I, L. R., 33 All., 612.

1918

 SUNDAR
NATH
v.
BARANA
NATH.

not been shown also that any party is in decidedly complete possession of a part of the subject of dispute. I attach the whole subject of dispute under section 146 of the Code of Criminal Procedure. viz., the lands and grain in Ubri Chauk, till a competent court has determined the rights of the parties to it and its possession." Against this order Sundar Nath applied in revision to the High Court. The application did not purport to be filed under any particular section of any particular Act, but contained the following grounds:—

"(1) Because the learned magistrate had no jurisdiction to proceed under section 145, Criminal Procedure Code, inasmuch as there were no proper parties before him.

(2) Because Barana Nath being a trespasser, his possession, even if proved, would not be recognized in law, and he cannot take advantage of the provisions of chapter XII of the Code of Criminal Procedure.

(3) Because the magistrate has not exercised his jurisdiction and made an order in accordance with section 145, Criminal Procedure Code, and maintained the party who had the title and possession both in his favour in possession.

(4) Because in any view, the order attaching the property and adding the various riders to his order imposing obligations on Barana Nath is contrary to law and improper on the merits."

Babu *Satya Chandra Mukerji*, for the applicant.

WALSH, J.—I have no power to send for the record in an application for revision relating to proceedings under Chapter XII.

Sub-section (3) of section 435, Criminal Procedure Code, absolutely prohibits that course. The law as laid down by the general current of authorities in this province is that the superintendence section, which is now section 107 of the Government of India Act, cannot be invoked so as to question proceedings which purport to be proceedings lawfully taken by a magistrate under Chapter XII. It is well recognized that there is an irreconcilable difference of opinion on this point between some of the High Courts, notably two recent judgements, one delivered by my brother Knox and one delivered in Patna by the former Chief Justice of the Patna High Court based upon the course of authorities. It is obvious that, having regard to the view established in this Province,

1918

SUNDAR
NATH
v.
BARANA
NATH.

it is difficult to question proceedings of this kind at all. It has been said that proceedings which purport to be under Chapter XII may be improperly taken, improperly brought or conducted, and therefore may be treated as if they were no proceedings under the Chapter. This view is not a sound one and has been frequently dissented from—even by the Privy Council in cases of awards, where the arbitrators, so long as they act within their jurisdiction, are masters of the situation. It has been sought by persons trying to get rid of an award to say that, if the arbitrators have gone wrong either in law or in procedure or something of that kind other than misconduct, although there is no appeal, the award is bad and therefore no award at all. In the same way it is sought to argue that proceedings under Chapter XII, where for example, all the proper parties are not required to attend court and so forth, being proceedings which are defective and therefore bad, may be treated as though they were no proceedings at all. I think it is impossible to give effect to this view, and there is the further difficulty, as pointed out by KNOX, J., that this cannot be determined without sending for the record. This is just what this Court cannot do.

On the other hand, there is the difficulty in the other point of view, viz., that though the Legislature has vested in this Court a complete discretionary power of superintendence to check irregular proceedings of inferior courts which may result in serious injury or injustice, if the view which I have just stated is correct—the view with regard to the sending for records or otherwise inquiring into proceedings under Chapter XII,—the jurisdiction of this Court to superintend proceedings under Chapter XII may become a dead letter. I think that this is not necessarily so. There is at any rate one way in which it seems to me both views may be reconciled. If proceedings totally without legal foundation or legislative authority are taken by a magistrate in the name of proceedings under Chapter XII, but not seriously purporting to be taken under, or to comply with the provisions of that Chapter, and this Court is satisfied of that fact by reliable evidence, then I think there is clearly a case for interference. I myself interfered in one case which seemed to be a palpable and serious misunderstanding of the powers conferred by this section, where

the magistrate had not even had a report which dealt with any question of the breach of peace, so that the legal foundation for his authority had never been laid, and in interfering in that case I adopted the dictum of Sir JOHN STANLEY, who seemed to think that the superintendence section could be applied to any circumstances to which revision would apply if it had not been expressly excluded.

Somehow or other in that case, I do not know how, the circumstances were before me, because the record had been sent for and the application had been admitted. It is always open to a party in such a case as this to satisfy the High Court that the property of which he is entitled to possession has been dealt with by an order which has no legal authority at all, and he may do so by an affidavit or in any other reliable manner, and thereby invoke the superintending power of the court; but I do not think he can ask this Court to interfere in revision or to send for the record, merely by showing that on the face of the judgement the magistrate has neglected or misinterpreted some of the provisions of the Chapter.

The application is rejected.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

L. W. ORDE (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA
IN COUNCIL (DEFENDANT).*

Act No. I of 1894 (Land Acquisition Act), sections 28, 40—Principles of assessment of compensation—Land forming part of compound of house, but actually in possession of tenants with occupancy rights.

The owner of a house with a compound attached to it let out a large part of the compound to agricultural tenants whom he allowed to acquire occupancy rights therein. *Held*, on a question arising as to the principle of assessing compensation for this portion under the Land Acquisition Act, 1894, that, so far as the owner's interest was concerned, compensation was properly calculated at so many years' purchase of the annual profits actually received by the owner at the time of the sale. The owner could not, in the circumstances, be allowed to claim compensation as for a building site. *Bombay Improvement Trust v. Jalbhoy Ardeshir* (1) referred to.

* First Appeal No. 849 of 1915, from a decree of L. Johnston, District Judge of Meerut, dated the 11th of May, 1915.

(1) (1909) I. L. R., 88 Bom., 439.

1918

SUNDAR
NATH
v.
BARANA
NATH.

1918

January, 29.