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There seem to be several legal grounds on which that court's order was justified. If the decision of the Board of Revenue were reported, it is obvious that a Civil Judge deciding the case would have looked at it. The fact that it is unreported makes no difference. I should have thought that in any event under section 49 of the Evidence Act, the Board's decision is a relevant fact as an opinion of an expert upon the meaning of a term applicable to the scheduled districts. The second point which Dr. Sen argued was that the defendant himself had let this question go by default at the original hearing of the suit. To my mind it is not a question of pleading, or of the rights of the parties strictly so-called. It is a question of jurisdiction. Once the circumstances provided by the Act are established in fact, the jurisdiction of the Civil Court is ousted, and a court which did not take notice of the provisions of the Act whether the parties pleaded them or not, would be acting outside its jurisdiction.

BY THE COURT.—We dismiss this appeal with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Justice Sir George Knox.*

EMPEROR v. SAKHAWAT ALI\*

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December, 18.

*Criminal Procedure Code, sections 145, 435 and 439—Government of India Act, 1915, section 107—Revision—Powers of High Court.*

Section 107 of the Government of India Act, 1915, does not give to a High Court the power to interfere in revision, despite the provisions of section 435 of the Code of Criminal Procedure, with orders passed under Chapter XII of the Code. *Ananda Chandra Bhattacharjee v. Carr Stephen* (1) not followed. *Jhinga Singh v. Ram Partap* (2) *Sundar Nath v. Barana Nath* (3) and *Syeda Khatun v. Lal Singh* (4) referred to. *Girāhcri Singh v. Hurdeo Narain Singh* (5) distinguished.

THE facts of this case were as follows :—

On the report of a Circle Inspector of police stating that he apprehended a breach of the peace on account of the strained

\* Criminal Revision No. 757 of 1919, from an order of Mumtaz-ullah Khan, Magistrate, First class, of Basti, dated the 7th of September, 1918.

(1) (1891) I. L. R., 19 Cal., 127. (3) (1918) I. L. R., 40 All., 364.

(2) (1903) I. L. R., 31 All., 150. (4) (1914) I. L. R., 36 All., 233.

(5) (1876) I. R., 3 I. A., 230.

feelings between two persons named Sakhawat Ali and Shukr-ullah in respect of certain fields and crops in dispute between them and suggesting that proceedings under section 145 of the Code of Criminal Procedure might be taken against them, a Magistrate of the first class passed an order calling upon the parties to appear and produce their evidence regarding possession of the fields and crops, and directing the crops to be attached and put in charge of a Receiver. The order did not specify the grounds of the Magistrate's being satisfied that there was a dispute likely to cause a breach of the peace concerning the aforesaid fields. Both parties adduced evidence to prove their respective possession, and eventually the Magistrate passed an order declaring that Shukr-ullah was in possession, directing the attached crops to be made over to him and forbidding all disturbance of his possession. Against this order Sakhawat Ali applied in revision to the High Court. The application for revision purported to be under section 107 of the Government of India Act, 1915 (5 and 6 Geo. V, Ch. 61), and was admitted under that section by a single Judge of the Court.

Maulvi *Iqbal Ahmad*, for Shukr-ullah the opposite party, took a preliminary objection that the revision did not lie. The High Court had no jurisdiction to entertain applications in revision against orders passed under section 145 of the Code of Criminal Procedure. Section 107 of the Government of India Act of 1915 did not confer any jurisdiction to entertain such applications.

*Dr. S. M. Sulaiman*, for the applicant:—

There is no order of the Magistrate setting forth that he was satisfied that dispute likely to cause a breach of the peace existed concerning the immovable property in question, nor is there an order stating the grounds of his being so satisfied. The Magistrate laid no legal foundation for his proceedings, and the whole proceedings were invalid and *ultra vires*, and were not such as could properly be deemed to have been under chapter XII of the Code of Criminal Procedure. Under such circumstances this Court has jurisdiction to entertain, and has entertained, applications in revision and has set aside the whole proceeding as having been without jurisdiction. Reference was made to—

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*Bihari Lal v. Chhajju* (1), *Dhan Pershad v. Ganesh* (2),  
*Emperor v. Rami Lochan* (3) and *Nathu Ram v. Emperor* (4).

Even where proceedings under chapter XII of the Code of Criminal Procedure were properly initiated, but subsequently the Magistrate did not comply with all the provisions of section 145 and the final order was without jurisdiction, this Court could interfere in revision and set aside those proceedings which were without jurisdiction; *Sheorani v. Baij Nath* (5) and *Jhengar v. Baij Nath* (6). The proceedings in the court below, purporting to be under section 145, were further vitiated by non-compliance with the provisions of clause (3) of the section requiring a copy of the initiatory order to be affixed to some conspicuous place at or near the subject of dispute. In the latest of the cases cited above it was laid down that where the proceedings purporting to be under section 145, were without jurisdiction the High Court had power to interfere under section 107 of the Government of India Act of 1915.

Maulvi *Iqbal Ahmad*, for the opposite party :—

The provisions of clause (3) of section 145 were substantially complied with. The parties had notice of the proceedings in the court below, and had their cases fully heard by the Magistrate. That being the case the order of the court below cannot be set aside in revision though the parties may not have been personally served with a copy of the first order, and a copy may not have been affixed at or near the property in dispute; *Debi Prasad v. Sheodat Rai* (7). It is submitted that the High Court has no jurisdiction to entertain applications in revision against orders passed under chapter XII of the Code of Criminal Procedure, howsoever irregular the proceedings of the lower court may have been. By clause (3) of section 435 the Legislature had deliberately excluded proceedings under chapter XII, from the revisional jurisdiction of the High Court. In the cases *Bihari Lal v. Chhajju* (1), *Dhan Pershad v. Ganesh* (2) and *Emperor v. Ram Lochan* (3) cited by the applicant, the question whether the

(1) (1905) Weekly Notes, 1907, p. 49. (4) (1917) 15 A. L. J., 270.

(2) (1913) 11 A. L. J., 696.

(5) (1916) 14 A. L. J., 146.

(3) (1914) I. L. R., 36 All., 143.

(6) (1913) 11 A. L. J., 586.

(7) (1907) I. L. R., 30 All., 41.

High Court had such jurisdiction was neither raised nor decided. The same remarks apply to the case in *Sheorani v. Baij Nath* (1), which, moreover, was a reference by the Sessions Judge and not a case of a revision filed by a party. In the case in *Nathu Ram v. Emperor* (2) it was, no doubt, held that the High Court had power to interfere in cases like the present; it was distinctly laid down, however, that such power was not derived under section 435 of the Code of Criminal Procedure, but under section 107 of the Government of India Act. It is submitted that if this Court has no jurisdiction to interfere under the Code of Criminal Procedure, it has no jurisdiction to do so under the Government of India Act; for under section 106 of that Act the appellate and revisional jurisdiction of this Court in criminal cases is to be governed by the said Code. As for the scope of section 107, it was fully discussed in the case of *Matukdhari Singh v. Jaisri* (3). The case of *Jhengar v. Baij Nath* (4) is certainly against me, but it is submitted that it was not correctly decided; the decision is directly opposed to that in *Jhingar Singh v. Ram Partap* (5). Reference was made to *Sayedā Khatun v. Lal Singh* (6). As to the merits, the mere omission of the Magistrate in his order initiating proceedings to state the grounds on which he was satisfied that there was a dispute likely to cause a breach of the peace, is only an irregularity which will not render the proceedings void, as the parties were in no way prejudiced thereby in the conduct of their respective cases, and no question was even raised in the court below; *In the matter of Chinnappudayan* (7). The order of the Magistrate refers to the report of the Circle Inspector of police which fully sets forth the reasons for an apprehension of breach of the peace. Such a reference has been held to be a sufficient statement of the reasons for the Magistrate being satisfied of the existence of a dispute likely to cause a breach of the peace; *Goluck Chandra Pal v. Kali Charan De* (8).

KNOX, J. :—Early in November last an application was presented to a learned Judge of this Court which is described as

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| (1) (1916) 14 A. L. J., 146.       | (5) (1908) I. L. R., 31 All., 150. |
| (2) (1917) 15 A. L. J., 270.       | (6) (1914) I. L. R., 36 All., 233. |
| (3) (1917) I. L. R., 39 All., 612. | (7) (1907) I. L. R., 30 Mad., 548. |
| (4) (1913) 11 A. L. J., 586.       | (8) (1886) I. L. R., 13 Cal., 175. |

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being a criminal revision against the order of M. Mumtaz-ullah Khan, Magistrate of the first class of Basti, dated the 7th of September, 1918, charge under section 145 of the Code of Criminal Procedure. It is sub-divided into three heads. The first is:—"Because, there being no order showing that the learned Magistrate was satisfied that a dispute likely to cause a breach of the peace exists, and he not having made any order in writing stating the grounds of his being so satisfied, the whole proceeding was without jurisdiction and the order is *ultra vires*." I need not, at any rate at present, go into the second and third grounds set out in this application. The application is endorsed by an order of this Court which runs as follows:—"I admit this under section 107 of the Government of India Act. Let notice go to show cause whether proceedings were taken and order made without jurisdiction." In pursuance of this order a notice went to the other party Shukr-ullah and also to the Magistrate whose order was attacked. They were told that the case would be heard and they were informed that they might show cause accordingly.

The point then that I have to consider is whether the proceedings taken before or by the Magistrate and the order made by him were or were not without jurisdiction. The reason for this order being passed is no doubt on account of what is stated in section 435, clause (3), of the Code of Criminal Procedure. It must be remembered that that clause sets out that proceedings under chapter XII are not proceedings within the meaning of section 435. I know of no section in the Code of Criminal Procedure other than section 435, and none other has been pointed out to me, whereby this Court can call for records of Subordinate criminal courts. Section 195 of the Code may indirectly give this power, but the case before me is not one under section 195 of the Code, and it has been laid down by this Court more than once that proceedings under chapter XII are not proceedings which can be called up by section 435 of the Code of Criminal Procedure. To this matter I shall again refer. But if the case is as stated by me, then this Court has no power under section 435 to call up any proceedings under chapter XII. The learned counsel who appears for the applicant seems to have felt this obstacle in his path, and to have in consequence

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moved the learned Judge of this Court to call up the proceedings under chapter XII by virtue of what he appears to have stated as being an enabling power, that this Court has in this direction under section 107 of the Government of India Act, 1915. I find some difficulty in following the line or course taken by him. Section 107 cited above is either a section consolidating the existing procedure or it is a new section creating some new jurisdiction or conferring some new powers. I will look at it from both sides. The powers vested in this High Court of Judicature, at the time the Government of India Act of 1915 commenced, are set out in section 29 of the Letters Patent under date the 17th of March, 29 Victoria. According to that the proceedings in all criminal cases, other than criminal cases which shall be brought before this High Court in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the Code of Criminal Procedure prescribed by an Act of the Governor-General in Council and being Act No. XXV of 1861 or by such further or other laws in relation to Criminal Procedure as may have been or may be made by such authority as aforesaid. The present case does not fall under the latter class of cases, *viz.*, cases brought before this Court in the exercise of its ordinary original criminal jurisdiction. Act No. XXV of 1861 has been repealed, and has been replaced by Act No. V of 1898. If section 107 is some new section conferring new powers or extending powers, then it is subject to what is known as the rule of strict construction [See Maxwell on Interpretation of Statutes, 5th Edition, p. 475. See also *Flower v. Lloyd* (1)]. The remarks made by Lord JUSTICE JAMES appear to me to have a strong bearing upon the case before me, and upon the power of this Court to entertain motions of this kind. I have a still further difficulty in understanding how section 107 can, in any way, apply to the present application. Looking to the language of section 107 I find that this Court has superintendence over all courts subordinate to its appellate jurisdiction and that it may do certain things, namely, call for returns, direct transfer of suits and appeals, make and issue general rules regulating the practice and proceedings of inferior courts, prescribe forms in

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which books, entries *etc.*, are to be kept in the offices of the inferior courts, and settle tables of fees.

The application before me certainly does not fall under returns nor under transfer of suits. Even if it does fall under rules, forms and tables which is open to doubt, such rules, forms and tables must not be inconsistent with the provisions of any Act for the time being in force, let us say Act No. V of 1898 for instance, and must have the previous approval of the Local Government. I know of no rules bearing upon chapter XII which have been issued by this Court and none such have been pointed out to me. I am then forced back upon the conclusion that if any power such as that claimed exists anywhere it exists in section 29 of the Letters Patent, and, as I have already said, I have not been satisfied that any such power exists under this section.

In the case of *Ananda Chandra Bhattacharjee v. Carr Stephen* (1) this point was raised. In fact, PETHERAM, C.J., says regarding it in his judgment that the point most pressed in the appeal was that the court had no jurisdiction to interfere with this order at all on the ground that orders made under section 144 are, by the last clause of section 435, exempted from the operation of that section. His reply to this was divided into two sections. First, the mere statement that an order is made under section 144, if it is not such an order as is contemplated by the section and could not be made under it, does not make it an order under that section. The second was that under section 439 the Court has the general power of revision of all orders made by inferior Criminal Courts which come before it in any way whatsoever, and it is clear that this Court, under clause 15 of the Charter, has a general power of superintendence and under that power can send for any record which it may desire to see. He also added that the Court has power to interfere under the Charter Act if the proceeding of a Magistrate is *ultra vires* and could not be made under section 144. He pointed out that this had been accepted in the Calcutta Court for a great many years, both under section 144 of the present Code and section 518 of the old Code. He added a list of decisions to that effect with which the court deciding that case agreed.

(1) (1891) I. L. R., 19 Cal., 127.

With every respect to the Calcutta Court in this matter, it appears to me that sufficient consideration was not given to the words of section 435. If we read section 435 as a whole it seems to amount to this. The High Court may call for and examine the record of any proceeding, proceedings under chapter XII *etc.*, being excepted, for the purpose of satisfying itself as to the legality or propriety of the finding *etc.*, and as to the regularity of any proceedings of the inferior courts other than proceedings under chapter XII of the Code of Criminal Procedure. When read in this light the difficulty of calling for records or proceedings under chapter XII again crops up, and I am face to face with the same difficulty that I had and on which I pronounced my judgment in *Jhingai Singh v. Ram Partap* (1). But I need not go further into this matter, for I have already dealt with it at length in previous decisions, except to add that in *Sundar Nath v. Barana Nath* (2), the view was maintained by another Judge of the Court that under the circumstances the Court cannot send for records.

There is one case which calls for consideration and that is the case of *Girdhari Singh v. Hurdeo Narain Singh* (3), in which the Privy Council upheld the High Court of Bengal in a decision arrived at by that Court upon an application under section 15 of the Charter Act. The Privy Council (see page 238) there said of a Subordinate Judge whose procedure was impugned that "it was competent to the High Court by a proceeding in the nature of a mandamus, to order the lower court to do that which it ought to have done, namely, having rejected the objections to the sale, to confirm it; and the High Court proceeded upon that section and made the order. But the High Court did not merely treat the judgment of the Subordinate Judge upon the application for review as a nullity; they entered into the question as to whether the objections to the sale were valid or not valid. In fact they treated the case in their decision as if the lower court had actually confirmed the sale, and there had been an appeal to them against that confirmation. Their Lordships think that they may look at the case now in the way in which the

(1) (1908) I. L. R., 31 All., 150. (2) (1918) I. L. R., 40 All., 364,

(3) (1876) L. R., 3 I. A., 230 (238).



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Judges looked at it then." The Privy Council then went into the merits and upheld the High Court and recognized that the duty of the High Court on such applications is to look into the merits and make a final order. With reference to this decision, by which of course I am bound, it must be noted, that the decision refers to the civil jurisdiction of the court and not to the criminal. Section 9 appears to give wider powers.

I now turn to the arguments by which the learned counsel for Saiyid Sakhawat Ali sought to support his application. Before me he put in an affidavit to which I have already referred. This affidavit says that the person swearing to it personally inspected the record of the section 145 proceedings and found that the very first order passed by the learned Magistrate was that of the 14th of February, 1918, of which he had obtained a certified copy. If that paper be read as it stands it is open to attack in that it makes no specific mention of the Magistrate having been satisfied that a dispute likely to cause a breach of the peace existed. The learned vakil for Shukr-ullah, on the other hand, points out that this copy is only part of the Magistrate's order and that the whole order if read is conclusive that the Magistrate had not only been satisfied, but in his order had stated that he was satisfied. I find he is right.

The net result is that so far as has been shown the Magistrate had jurisdiction to hold this inquiry and was properly seised of the case. The case is one which is entirely in conformity with the case of *Syedra Khatun v. Lal Singh* (1). This Court has no jurisdiction to interfere and the application is dismissed. I wish to add that I am much indebted to the counsel on either side for their careful and elaborate arguments. I have not gone into those arguments at greater length because, as I say, I hold that I have no jurisdiction to interfere in this case. The following cases were cited to me and I add them here by way of reference.

For the applicant:—*Bihari Lal v. Ohhajju* (2), *Dhan Pershad v. Gamesh* (3), *Jhengar v. Baij Nath* (4), *Emperor v. Ram Lochan* (5), *Nathu Ram v. Emperor* (6), *Sheorani v. Baij Nath* (7).

(1) (1914) I. L. R., 36 All., 233.

(4) (1913) 11 A. L. J., 586.

(2) (1905) Weekly Notes, 1917, p. 49.

(5) (1914) I. L. R., 36 All., 143.

(3) (1913) 11 A. L. J., 690.

(6) (1917) 15 A. L. J., 270.

(7) (1916) 14 A. L. J., 143.

For the opposite party:—*Debi Prasad v. Sheodat Rai* (1) *Jhingai Singh v. Ram Partap* (2), *Soyeda Khatun v. Lal Singh* (3), *Har Prasad v. Pandurang* (4), *Goluck Chandra Pal v. Kali Charan De* (5), *Matukdhari Singh v. Jaisri*, (6), *In the matter of Chinnappudayan* (7).

Nowhere throughout the case was any allegation ever raised by the applicants that they had been prejudiced, although the case was argued for a month and a mass of evidence taken.

*Application dismissed.*

*Before Justice Sir George Knox.*

EMPEROR v. PARWARI.\*

*Act No. XLV of 1860 (Indian Penal Code), section 499—Defamation—Statement made to the police—Criminal Procedure Code, sections 154 and 155.*

Statements made to the Police as the result of action taken under section 154 or section 155 of the Code of Criminal Procedure are privileged statements, and as such, cannot be used as evidence or made the foundation of a charge of defamation. *Manjaya v. Sesa Shetti* (8) and *Queen-Empress v. Govinda Pillai* (9) referred to.

Further, inasmuch as a statement, in order to be defamatory within the meaning of section 499 of the Indian Penal Code, must be made with a certain intention, a statement made primarily with the object that the person making it should escape from a difficulty cannot be made the subject of a criminal charge merely because it contains matter which may be harmful to the reputation of other people or hurtful to their feelings.

THIS was an application in revision against an appellate order of the Sessions Judge of Saharanpur, maintaining the conviction and sentence of the applicant on a charge of defamation under sections 499 and 500 of the Indian Penal Code. The facts of the case are fully stated in the judgment of the Court.

Mr. A. S. Osborne, for the applicant.

Mr. Nihal Chand and Mr. J. M. Banerji, for the opposite party.

\* Criminal Revision No. 743 of 1918, from an order of J. H. Cuming, Sessions Judge of Saharanpur, dated the 29th of October 1918.

- (1) (1907) I. L. R., 30 All., 41. (5) (1886) I. L. R., 13 Calc., 175.  
 (2) (1908) I. L. R., 31 All., 150. (6) (1917) I. L. R., 39 All., 612.  
 (3) (1914) I. L. R., 36 All., 233. (7) (1907) I. L. R., 30 Mad., 548.  
 (4) Weekly Notes, 1905, p. 260. (8) (1888) I. L. R., 11 Mad., 477.  
 (9) (1892) I. L. R., 16 Mad., 235.

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