

REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

RISAL SINGH v. BALJIT SINGH AND OTHERS.*

1929
April, 10.

Criminal Procedure Code, section 139A—Public right, denial of—Power of Magistrate to require either party to get the question of the right decided by a civil court—Jurisdiction.

A Magistrate, while staying proceedings in accordance with clause (2) of section 139A of the Criminal Procedure Code, has jurisdiction to direct a party to take proceedings in the civil court for decision of the matter of the existence of the public right in question and to fix a period of time therefor.

Mr. *Saila Nath Mukerji*, for the applicant.

Messrs. *Nehal Chand and Harendra Krishna Mukerji*, for the opposite parties.

DALAL, J. :—As I have previously remarked in several judgements, chapter X of the Code of Criminal Procedure was not revised (with care in 1923 when additions were made to it in accordance with certain rulings of certain High Courts. In section 139A it is not stated who is to have the matter of the existence of a right decided by a competent civil court and what order the Magistrate has to pass in order to reach an end to the criminal litigation. Under clause (2) of that section the Magistrate has to stay proceedings, and obviously the proceedings are not meant to be stayed indefinitely. There should be some period of the stay, and the Magistrate ought to have the power of dismissing the application on the right not being decided by a civil court on motion by a particular party within a certain time. In the present case the question of the authority of the

* Criminal Reference No. 107 of 1929.

Magistrate to direct a party to take proceedings in the civil court has not been questioned by Mr. *Nehal Chand*, and argument was addressed to me only on the particular facts of the present case as to whether Risal Singh or Baljit Singh should be directed to take proceedings in the civil court. I think that this is the right view taken of the law by Mr. *Nehal Chand* and of the deduction that is to be made both from statute law and from cases decided by this Court.

Coming to the particular facts of this case, Risal Singh desired that there should be a public road over a particular area of land which is claimed by Baljit Singh as his own. The finding of the Magistrate is: "Taking all the facts in view, it seems to me that there is reliable evidence in support of the denial of the defendants that for some considerable time past there has been no existence of any public right of way as claimed by the complainant." The present decision, therefore, is in favour of the defendant, and if no action were taken the result would be that the complainant's application would be dismissed. Under the circumstances I direct that Risal Singh shall prove the existence of a public right of way over the land in dispute within one year of today's date, in default of which the Magistrate will be at liberty to dismiss his application.

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