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SRI KRISHAN  
LAL  
v.  
BIRAI SINGH

The plea of jurisdiction was not taken in the written statement; it appears to have been urged only at the time of the arguments. The defendants should not be allowed their costs in the first court. The trial court found the point in favour of the defendants and the lower appellate court has not considered it. The defendants will have their costs in the lower appellate court and in this Court.

### REVISIONAL CRIMINAL.

*Before Mr. Justice King and Mr. Justice Thom.*

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June, 13.

EMPEROR v. BARMHA SINGH AND OTHERS.\*

*Criminal Procedure Code, sections 145 and 537—Magistrate's omission to record grounds of his being satisfied that a dispute likely to cause a breach of peace exists—Subsequent proceedings not vitiated unless it has occasioned a failure of justice—Irregularity—Jurisdiction.*

In proceedings under section 145 of the Criminal Procedure Code the mere omission by the Magistrate to record, under clause (1) of the section, the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists is an irregularity in procedure but does not deprive him of jurisdiction to take further proceedings under the section. The breach of a mandatory provision of the Code of Criminal Procedure does not necessarily amount to such an illegality as vitiates the whole trial or proceedings.

The provisions of section 537 of the Code are also mandatory; and a court of revision is absolutely prohibited from setting aside an order under section 145 on account of any omission or irregularity in the proceedings, unless such omission or irregularity has, in fact, prejudiced the accused or occasioned a failure of justice.

Messrs. *Govind Das* and *Durga Charan Singh*, for the applicants.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

\*Criminal Revision No. 21 of 1932, from an order of Ganga Prasad Varma, Sessions Judge of Fatehpur, dated the 23rd of September, 1931.

KING and THOM, JJ. :—This is an application in revision against an order passed by a Magistrate under section 145 of the Criminal Procedure Code. The application raises the question whether the Magistrate's omission, to record in his order under section 145(1) the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning some immovable property, vitiates the subsequent proceedings.

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One Madho Singh made an application under section 145 of the Code of Criminal Procedure alleging that there was a dispute between him and the persons of the opposite party regarding the possession of a certain field, and that there was a likelihood of a breach of the peace on account of the interference by the opposite party. He stated that the land was his *sir* and he had begun cutting his crop when the opposite party came with lathis and drove him away by force and threatened to kill him if he came near the field again. The Magistrate called for a police report and also took evidence under section 202 of the Code of Criminal Procedure. On the 13th of March the application was dismissed because Madho Singh failed to deposit the necessary process fees. On the 17th of March Madho Singh renewed his application. His statement was recorded and it was ordered that the application be put up next day with the previous papers. Next day the Magistrate perused the previous papers and the police report and then passed an order in the following words: "Summon the parties to file written statements and the property attached will not be released, if not yet so done." It seems that the Magistrate had authorised the police officer to attach the property if necessary.

Undoubtedly this order was not in the form required by section 145(1). The Magistrate did not state the grounds of his being satisfied that there was a likelihood of a breach of the peace concerning the disputed

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plot of land. It is obvious that he was so satisfied by the police report and by the statements of the complainant and his witnesses, but he omitted to state in his order the grounds of his being so satisfied, as he should have done in conformity with section 145(1).

It has been argued for the applicants that even if no prejudice was caused to them, and even if no failure of justice has been occasioned, the omission in the Magistrate's order had the effect of depriving him of jurisdiction to proceed further, and that the subsequent order passed under section 145(6) must be held to have been passed without jurisdiction.

Several rulings have been cited in support of this view: *Bihari Lal v. Chhajju* (1), *Dan Pershad v. Ganesh* (2), *Nathu Ram v. Emperor* (3) and *Banka Singh v. Gokul* (4). These rulings do no doubt support the applicants' contention that the Magistrate had no jurisdiction to pass an order under a subsequent sub-section of section 145 without having made a preliminary order under sub-section (1) in conformity with the requirements of that sub-section.

For the Crown we have been referred to a very recent case, *Madan Mohan Lal v. Sheoraj Kunwar* (5), in which BOYS, J., expressly considered three of the Allahabad rulings to which we have referred, and expressed the view that "Section 145(1) is not mandatory except in this sense that the court will set aside an order passed under the latter clauses of section 145 if there is any reason to believe that the omission of an order, or the passing of an order not strictly in the terms of section 145(1), led to some prejudice to one or other of the parties. It would be quite unjustifiable and unreasonable to set aside lengthy proceedings under section 145 when the facts indicate that the parties could not conceivably have been prejudiced by the

(1) (1905) 2 A.L.J., 272.

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

(3) (1917) 15 A.L.J., 270.

(4) (1927) I.L.R., 49 All., 325.

(5) (1932) A.L.J., 503.

absence of a formal order, where it is manifest that they knew well all the facts and contested the matter with the advantage of the knowledge of the whole of the facts. The omission to draw up an order under section 145(1) has nothing to do with the question of jurisdiction."

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That case is very much on all fours with the case before us now, and we endorse the reasoning adopted by the learned Judge in that case. In our opinion the Magistrate had power to deal with the matter in question, and with the persons in question, and therefore had jurisdiction in the case. The Magistrate also satisfied himself from the police report and from the evidence recorded that there was a likelihood of a breach of the peace concerning the field in dispute. If he omitted to record the grounds of his being so satisfied, in his order passed under sub-section (1), he did not by reason of that omission lose "jurisdiction" to take further proceedings, although he was guilty of an omission or irregularity in procedure. The breach of a mandatory provision of the Code of Criminal Procedure does not necessarily amount to such an illegality as vitiates the whole trial or proceedings. For this proposition we rely upon the ruling of their Lordships of the Privy Council in *Abdul Rahman v. King-Emperor* (1). In that case a mandatory provision of the Code had been broken. But their Lordships held nevertheless that it was merely an irregularity which was curable under section 537 of the Code, as no failure of justice had been occasioned and the accused had not been in any way prejudiced.

It is important to bear in mind the fact that the provisions of section 537 are also mandatory. A court of revision is absolutely prohibited from setting aside an order under section 145 on account of any omission or irregularity in the proceedings, unless such omission or irregularity has in fact occasioned a failure of

(1) (1926) 54 I.A., 96; 25 A.L.J., 117.

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justice. In view of the Privy Council ruling it is no longer open to a High Court to hold that section 537 will not apply when there has been a breach of a mandatory provision of procedure, on the ground that such a breach is an illegality and not a mere irregularity. As a matter of fact most of the rules of procedure are mandatory. When anything is left to a Magistrate's discretion, he can hardly be held guilty of an irregularity if he exercises a wrong discretion.

We think it is clear that we are not empowered to set aside the Magistrate's order unless we hold that his omission to state his grounds for being satisfied that there was a likelihood of a breach of the peace has in fact occasioned a failure of justice. In the present case we are satisfied that the omission of the Magistrate to record his order strictly in accordance with the provisions of sub-section (1) of section 145 has not occasioned any failure of justice and has not in any way prejudiced the applicants, who have had a perfectly fair trial upon the merits. They raised no objection to the defect in the Magistrate's order under section 145(1).

We agree with the learned Sessions Judge who relied upon a ruling of this Court in *Mst. Har Piari v. Nathe Lal* (1).

We accordingly dismiss the application and uphold the Magistrate's order, but we would warn the Magistrate to be more careful in future to follow strictly the procedure laid down in the Code.

(1) (1920) 18 A.L.J., 1140.