

*Before Mr. Justice Trevelyan and Mr. Justice Rampini.*

TARINI CHARAN CHOWDHRY (PETITIONER) v. AMULYA  
RATAN ROY (OPPOSITE PARTY).\*

1893  
April 6.

*Criminal Procedure Code, 1882, s. 145—Striking off proceedings under s. 145, Code of Criminal Procedure, effect of—Breach of the peace—New proceeding.*

Proceedings under section 145 of the Code of Criminal Procedure cannot be renewed after the dispute has been settled and an order has been made that the case be struck off. Under such circumstances a new proceeding would not be justified only on the materials upon which the proceeding, which was struck off, was based.

THIS was a rule calling on the opposite party to show cause why an order passed by the Deputy Magistrate of Jessore, dated the 30th December 1892, in certain proceedings originally instituted on the 17th May 1892, under section 145 of the Code of Criminal Procedure, should not be set aside. The Magistrate by his order found the second party (the opposite party before the High Court) to be in possession of the land in dispute, and directed him to be maintained in possession until ousted by due course of law.

The facts of the case are sufficiently stated in the judgment of the High Court for the purpose of this report.

Mr. *W. C. Bonnerjee* for the petitioner.

Mr. *J. T. Woodroffe* and Baboo *Promotha Nath Sen* for the opposite party.

The judgment of the High Court (TREVELYAN and RAMPINI JJ.) was as follows:—

This is an application to set aside an order made under section 145, Code of Criminal Procedure, whereby possession of the land in dispute was declared to be in the second party. We have had the advantage of hearing Mr. Woodroffe with regard to the whole case, and have come to the conclusion that, as matters stand, it is impossible to support the order. The proceedings with regard to this land under section 145 began so far back as the 17th May

\* Criminal Revision No. 119 of 1893, against the order passed by Baboo Khetra Mohan Mitra, Deputy Magistrate, Jessore, dated the 30th of December 1892.

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1892. They were based upon a police report which is dated 11th April 1892. Written statements were filed in the ordinary course, and matters went on until the parties presented petitions asking for an opportunity either to have their boundaries demarcated under the Survey Act or to settle their dispute (as to boundaries apparently) by arbitration. An order was made by the Magistrate on the 23rd June 1892 in these terms:—"Both parties have filed petitions to the effect that until the dispute is settled, either under the provisions of the Survey Act or by arbitration, they would not go upon the lands in dispute. The case under section 145 may, therefore, be struck off."

Now the first question which arises is, what is the effect of an order striking off proceedings under section 145, Code of Criminal Procedure. As Mr. Woodroffe has told us, there is a series of decisions with regard to the effect of striking off the file of a Court applications in civil matters, but we think that those stand on an entirely different footing from proceedings of a quasi-criminal description. The section itself provides for a case where a Magistrate can cancel his order. Those are cases where parties show him that no dispute exists, and if the likelihood of a breach of the peace has ceased to exist before the proceedings under section 145 have terminated, it follows that there can be no necessity for a continuation of such proceedings. The result of these applications which were sanctioned by the Magistrate practically amounted to cessation, at any rate for the time being, of any likelihood of a breach of the peace. That must have been the view which the Magistrate took of it, as he considered it unnecessary to proceed, at any rate then, with those proceedings. We think that unless it can be shown that there is a legislative enactment giving a power to that effect, cessation by the order of the Magistrate of any criminal proceedings must, until that order is set aside, operate not only as staying the proceedings, but destroying them. This construction of the law is one also which the Magistrate himself seems to some extent to have adopted when, in his order of the 23rd September 1892, he stated that proceedings under section 145 were necessary and a fresh proceeding should be drawn up. Whatever his view may have been in the matter, we think the effect of his earlier

order was to destroy the proceedings, and anything done after that under section 145 must start afresh and not stand upon the basis of the earlier proceedings. A new application was made by Mr. Woodroffe's client, who is the second party, in September, pointing out that the arrangement come to between the parties had fallen through, and upon that the Magistrate made an order on the 23rd September, in which he said—"I find that the dispute between the two parties as to the possession of and title to the 193 bighas in question has not been settled by arbitration, nor have any practical steps been taken for that purpose. I also find that the first party, Tarini Charan Chowdhry, is not willing to abide by the decision of an arbitrator appointed in connection with this case. As the crops are, some of them, nearly ready for being cut, a breach of the peace is likely to take place if either party attempt to cut them. Proceedings under section 145 are, therefore, necessary. A fresh proceeding can be drawn up." That order was forwarded to the Deputy Magistrate, and from that point, in our opinion, the new proceedings began, and it is necessary to see whether those proceedings are regular. Under section 145, it is necessary that there should be a preliminary proceeding, and such order shall be in writing, stating the grounds on which the Magistrate has been satisfied that a dispute likely to cause a breach of the peace exists. Now, the proceeding in this case is dated 15th October 1892, and it recites as its basis a report of the Sub-Inspector of the Nawapara outpost, from which it appeared to the Magistrate that there was likelihood of a breach of the peace. This report of the Sub-Inspector appears to be the old report of April 1892, and this on the face of the proceeding is its only basis. We think that the Magistrate was not right, in October, in acting only upon a report, dated the previous April, when the likelihood of a breach of the peace which is referred to in that report must have passed away, and it was on the ground that it had so passed away that the Magistrate struck off the earlier proceedings. It is not always easy to say what interval should elapse between an information and proceeding, but here, as there was no information of any likelihood of a breach of the peace after the whole proceedings had been struck off, we think this particular proceeding is defective. The decisions of this Court

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have frequently emphasised the necessity of a proceeding which forms the basis of section 145, stating the information upon which the Magistrate has reason to suppose that a breach of the peace is probable or imminent. In his explanation the Magistrate has pointed out certain proceedings under section 107, which took place in November, and showed at the time of the proceedings that there was likelihood of a breach of the peace. But the likelihood which may then have existed, and which might have reference to the probable breach of the peace referred to by the Magistrate, was not what he now refers to. He was referring to a different thing altogether. The setting aside of these proceedings may only lead to the institution of a fresh proceeding. That, of course, is a matter for the Magistrate to determine, having regard to the question whether at the present moment there is or is not likelihood of a breach of the peace. But inasmuch as the proceeding now before us does not recite anything on which the Magistrate could reasonably have supposed that there was, at the time of recording the proceeding, a likelihood of a breach of the peace, we think that all the proceedings are defective and must be set aside.

H. T. H.

*Rule made absolute and order set aside.*

*Before Mr. Justice Trevelyan and Mr. Justice Rampini.*

HARDWAR SING or LALL (PETITIONER) v. KHEGA OJHA  
 (OPPOSITE PARTY)\*

1893  
 April 11.

*Bench of Magistrates, absence of member of—Hearing of part of case by one Bench of Magistrates, and decision by another—Criminal Procedure Code, 1882, ss. 16, 350—Rules framed by Local Government for the guidance of Benches of Magistrates under section 16, Criminal Procedure Code—Ultra vires.*

Rule 8 of the rules framed by the Local Government for the guidance of Benches of Magistrates is *ultra vires*.

An Honorary Magistrate may not give judgment and pass sentence in a case unless he has been a member of the Bench during the whole of the hearing of the case.

\* Criminal Revision No. 101 of 1893, against the order passed by L. Hare, Esq., District Magistrate of Mozufferpore, dated the 31st January 1893, affirming the order passed by the Bench of Honorary Magistrates of Sitamarhee, dated the 18th of January 1893.