

REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge.

KING-EMPEROR (APPELLANT) v. BAIJNATH
(COMPLAINANT-RESPONDENT).*

1929
October, 3.

*Criminal Procedure Code (Act V) of 1898, section 145(1)—
Dispossession—Restoration to possession by an order
passed more than two months after dispossession, whether
justified by law.*

Held, that the words "two months from the date of the order" under section 145(1) of the Code of Criminal Procedure mean two months from the date of the order and not two months from the date of the complaint. The provisions of section 145 are directed in the first place to enable a Magistrate to pass orders as to retention of possession with the object of preventing a breach of the peace. These orders have no effect as to title. The law considers that it is desirable in order to prevent a breach of the peace to retain in possession the person who is in possession whatever his title may be but a special exception is made in favour of persons who have been very recently dispossessed. Where it is found that a man has been dispossessed within two months or less of the date of the preliminary order he is treated, as though he were in possession on the date of the preliminary order. But the period is two months and no more. *R. Srinivasa Reddy v. M. Dasaratha Rama Reddy* (1), dissented from.

Where, therefore, a preliminary order under section 145(1) of the Code of Criminal Procedure restoring a person to possession was passed by the Magistrate more than two months after that person's dispossession it was not justified by law.

Mr. *Radha Krishna*, for the appellant.

STUART, C. J. :—The question which has been referred to this Court is this.

Baijnath was on the facts dispossessed from possession of a house on the 28th of March, 1929. The Sub-Divisional Magistrate passed his preliminary order under section 145(1) of the Code of Criminal Procedure

*Criminal Reference No. 46 of 1929.
(1) (1928) I. L. R., 52 Mad., 66.

on the 10th of June, 1929. At that time Baijnath had been out of possession for more than two months. It is accordingly suggested by the District Magistrate of Partabgarh, who has referred the case, that the order restoring Baijnath to possession is not justified by law. The normal procedure is to declare in possession and to retain in possession the person who is in actual possession on the date of the preliminary order. But this rule is relaxed to the following extent. Where it is found that a man has been dispossessed within two months or less of the date of the preliminary order he is treated, as though he were in possession on the date of the preliminary order. But the period is two months and no more. The learned Counsel who appears against the reference relied upon a judgment of Mr. Justice DEVADOSS sitting singly reported in *R. Srinivasa Reddy v. M. Dasaratha Rama Reddy* (1) where the learned Judge decided that the period of two months should be taken from the date of the application made to the Magistrate and not from the date of the Magistrate's order. The learned Judge says that—

“Though the words of the proviso are capable of the interpretation, that the dispossession must be within two months of the preliminary order, yet the intent and object of the section must be taken into consideration before such an interpretation is put upon it.”

With all due respect to the learned Judge I am unable to agree with him. Where the section says “two months” I am unable to find, that the period can be extended, whatever view may be taken of the intent and object of the section. As far as I understand, the provisions of section 145 are directed in the first place to enable a Magistrate to pass orders as to retention of

(1) (1928) I. L. R., 52 Mad., 66.

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Before Sir Louis Stuart, Knight, Chief Judge.

MUSAMMAT MARIAM (COMPLAINANT-APPLICANT) v.
KADIR BAKHSH (OPPOSITE PARTY.)*

1929
October, 3.

*Criminal Procedure Code (Act V of 1898), section 488—
Maintenance—Muhammadan wife, whether entitled to
maintenance only during Iddat or even after that period.*

Where a Muhammadan lady applied for maintenance under section 488 of the Code of Criminal Procedure and the husband divorced her before the Court, *held*, that she was entitled to maintenance during the period of Iddat and not after that period has expired. *In the matter of the petition*

*Criminal Reference No. 37 of 1929.