

## REVISIONAL CRIMINAL

Before Mr. Justice Rachhpal Singh

NISAR HUSAIN KHAN AND OTHERS (APPLICANTS) *v.* KING-<sup>1934</sup>  
EMPEROR THROUGH NAGESHAR BAKHSH SINGH (COM-<sup>February, 27</sup>  
PLAINANT-OPPOSITE PARTY.)\*

*Criminal Procedure Code (Act V of 1898), sections 107 and 145—Person believing to be entitled to immoveable property—Attempt to take possession—Show of force and threat to force tenants to pay rent—Action under section 107, whether justified.*

Where there exists a dispute relating to immoveable property which is likely to lead to a breach of the peace, the Magistrate concerned is not necessarily bound to proceed under section 145, but can take action equally under section 107 of the Code of Criminal Procedure. If a person believing to be entitled to get possession over immoveable property attempts to take peaceful possession over it, and makes collections from tenants without creating any disturbance then no action should be taken against him under section 107 of the Code of Criminal Procedure; but if in his endeavour to obtain possession, he makes a show of armed forces and threatens to force tenants to pay rent to him, then he is doing a thing which is not lawful and the Magistrate is fully competent to take action against him under section 107 of the Code of Criminal Procedure. *Emperor v. Abbas* (1), and *Emperor v. Thakur Pande* (2), relied on. *Balajit Singh v. Bhoju Ghose* (3), dissented from. *Sheo-balak Singh v. Kamaruddin Mandal* (4), distinguished. *Din Dayal v. Emperor* (5), referred to.

Mr. H. G. Walford, for the applicants.

The Assistant Government Advocate (Mr. H. K. Ghosh), assisted by Mr. B. K. Dhaon, for the Opposite Party.

RACHHPAL SINGH, J.:—This is an application for revision by the applicants against the order of the learned Sessions Judge of Fyzabad confirming the order of a Sub-Divisional Magistrate of Sultanpur under which the

\*Criminal Revision No. 4 of 1934, from the order of G. C. Badhwar, I.C.S., Sessions Judge of Fyzabad, dated the 16th of December, 1933.

(1) (1911) I.L.R., 39 Cal., 150. (2) (1912) I.L.R., 34 All., 440.

(3) (1907) I.L.R., 35 Cal., 117. (4) (1922) I.L.R., 2 Pat., 04.

(5) (1907) I.L.R., 34 Cal., 935.

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applicants have been bound over to keep the peace for a period of one year.

It appears that one Ghulam Husain was in possession of village Tikaria in the taluqa of Maniarpur. In 1904, Ghulam Husain mortgaged this village with possession to Babu Nageshar Bakhsh Singh who has been in possession since then. Ghulam Husain died about 7 or 8 years ago. Ruqaiya Khanam, the mother of Babu Yad Ali Khan, succeeded to a portion of this estate. She died on the 15th of October, 1932, when she was succeeded by her son Babu Yad Ali Khan. Babu Nisar Husain Khan is the father of Babu Yad Ali Khan. He is one of the persons who have been bound over while the other applicants are the servants of Babu Yad Ali Khan. A complaint was made to the Deputy Commissioner of Sultanpur by Babu Nageshar Bakhsh Singh, alleging that Babu Nisar Husain Khan, on behalf of his son, Babu Yad Ali Khan, was attempting to take forcible possession of the aforesaid village, and that there was an apprehension of a breach of the peace. The learned Deputy Commissioner asked the police to make a report about the matter who reported that there was a likelihood of a breach of the peace. Then proceedings were started against the applicants under section 107 of the Code of Criminal Procedure with the result that they have been bound down.

Ghulam Husain, who mortgaged the aforesaid village in favour of Babu Nageshar Bakhsh Singh, was a relation of Babu Yad Ali Khan. The defence was that Ghulam Husain was holding the village only as a *guzaradar* and that he was incompetent to create a valid mortgage. It was contended that on the death of Ghulam Husain, the proprietor of the estate was entitled to resume possession over the village and that there was no apprehension of a breach of the peace.

The learned Magistrate who heard the evidence came to the conclusion that there was serious apprehension of a breach of the peace, as Babu Nisar Husain Khan was

attempting to take forcible possession over the village and was threatening the tenants. The learned Sessions Judge has agreed with this finding.

It has been argued before me by the learned Counsel appearing for the applicants, that Babu Yad Ali Khan was only exercising his legal right to take possession over the village and, therefore, the learned Magistrate was not right in taking action under section 107 of the Code of Criminal Procedure. It was suggested by him that the proper course for the Magistrate in a case like this was to take proceedings under section 145 of the Code of Criminal Procedure. It appears to be well settled that where acts which amount to an exercise of lawful rights are done, they are not to be treated as wrongful acts necessitating an order under section 107 of the Code of Criminal Procedure. This was the view taken in *Din Dayal v. Emperor* (1). This view, it may at once be conceded, is perfectly correct. If a man in exercise of his lawful rights goes to take possession over a village, then he is not to be bound down simply because the opposite party may create trouble which might lead to a breach of the peace. The law gives full liberty to a citizen to exercise his legal rights in the fullest possible manner, and it would be wrong to take action against him on the sole ground that the party in possession might create trouble. In such a case, the duty of the court would be to help the person who is exercising his lawful right and to bind down the opposite party from whom trouble is apprehended. I am prepared to agree with the arguments of the learned Counsel for the applicants to this extent; but it will be too broad a proposition to lay down that in no case, where a person is exercising his lawful rights, can a Magistrate take action under section 107 of the Code of Criminal Procedure. In my opinion where a person who has the legal right to take possession and in exercise of that right wishes to over-awe his adversary by making a show of armed forces and threatens to beat

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tenants, then it cannot be said that action under section 107 cannot be taken. It is true that the man is exercising his legal right but he is doing so in an unlawful manner which gives jurisdiction to the Magistrate. It appears to me that the question as to whether or not preventive action under this section is necessary is to be decided with reference to the facts of each case. Suppose that a person who has a legal right to take possession over some immoveable property takes a body of armed men with a view to collect rent, and threatens to beat the tenants in case of their refusal, then it would be wrong to say that the Magistrate is not competent to take action solely on the ground that the man has a legal right to take possession. Of course, it is true that he may have a legal right, but no one has a right to threaten and force other people to pay rent to him. Reliance was placed by the learned Counsel for the appellants on *Balajit Singh v. Bhoju Ghose* (1), where it was held that where there was a *bona fide* dispute relating to immoveable property, the proper course for the Magistrate to adopt was to proceed under section 145 of the Code of Criminal Procedure and not under section 107. The learned Judges held that the words in section 145 were mandatory, while the language of section 107 was discretionary. Another ruling on which reliance was placed by the applicants is *Sheobalak Singh v. Kamaruddin Mandal* (2). That ruling is not directly in point. It may be pointed out that the view taken by the Calcutta High Court in the above mentioned ruling was not accepted in a subsequent case decided by a Full Bench of that very Court which is *Emperor v. Abbas* (3). The two learned Judges who referred the case to the Full Bench in their order observed that "upon a review of the authorities, we are unable to follow the case of *Balajit Singh v. Bhoju Ghose* (1) . . ." It appears to me, if I may say so with all respect, that the correct

(1) (1907) I.L.R., 35 Cal., 117.

(2) (1922) I.L.R., 2 Pat., 94.

(3) (1911) I.L.R., 39 Cal., 150.

rule on this point is laid down in this Full Bench case, and which is that the fact that there is a dispute concerning land, likely to cause a breach of the peace, does not deprive a Magistrate of jurisdiction under section 107 of the Code of Criminal Procedure, where he is informed that any person is likely to commit a breach of the peace or disturb public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. In *Emperor v. Thakur Pande* (1), the Allahabad High Court took the view that where there existed a dispute relating to immovable property which was likely to lead to a breach of the peace, the Magistrate concerned was not necessarily bound to proceed under section 145, but could take action equally under section 107 of the Code of Criminal Procedure. I agree with this view. The view taken by the Calcutta High Court in I. L. R., 35 Cal., 117 was not followed. If a person considers himself entitled to get immediate possession over a village and goes there to take possession, then his action is perfectly lawful and in a case of this nature it would not be right to take action against him under section 107 of the Code of Criminal Procedure. But on the other hand, if with a view to take possession he goes to the village taking with him an armed body of men, and threatens the tenants and forces them to pay rent to him the Magistrate is certainly within his jurisdiction to take proceedings against him under section 107 of the Code of Criminal Procedure. It cannot be said that the action of a person claiming to get possession over land is not wrongful when he makes a show of armed forces and also threatens tenants to pay him rent. If the contentions of the learned Counsel for the applicants were correct, then it would mean that in no case can a Magistrate take proceedings under section 107 of the Code of Criminal Procedure in disputes relating to immovable property. In my opinion the correct view of law

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on the point appears to be this: If a person believing to be entitled to get possession over immovable property attempts to take peaceful possession over it, and makes collections from tenants without creating any disturbance then no action should be taken against him under section 107 of the Code of Criminal Procedure; but if in his endeavour to obtain possession, he makes a show of armed forces and threatens to force tenants to pay rent to him, then he is doing a thing which is not lawful and the Magistrate is fully competent to take action against him under section 107 of the Code of Criminal Procedure.

Now I proceed to consider the case before me in the light of the observations made by me above. The learned Magistrate in his judgment has discussed carefully the evidence produced in the case. Seven witnesses had been examined on behalf of the prosecution and they deposed that Babu Nisar Husain Khan was creating trouble, was forcing them to pay rent and was threatening them in case payment was not made to him. On a consideration of the entire evidence produced before him, he came to the conclusion that there was considerable apprehension of a breach of the peace because of the attempt of Babu Nisar Husain Khan to make forcible collections. This finding was affirmed by the learned Sessions Judge and it is evident that it is not open to the applicants to challenge it in revision. I am, therefore, of opinion that the order complained against is correct and should be affirmed. For these reasons the application stands dismissed.

*Application dismissed.*