

## Revisional Criminal.

*Before Sir Shadi Lal, Chief Justice.*

GHULAM MUHAMMAD, ETC.—*Petitioners*

*versus*

THE CROWN, THROUGH *Mst. ALLAH WASAI*  
(COMPLAINANT)—*Respondent.*

Criminal Revision No. 609 of 1922.

*Criminal Procedure Code, Act V of 1898, section 145—Application consigned to record room on the statement of the parties that they did not wish to proceed with the case—Second application cannot be treated as a continuation of the previous application.*

*Held*, that proceedings under section 145, Criminal Procedure Code 1898, 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.

*Tarini Charan Chowdhry v. Anulya Ratan Roy* (1), followed.

*Case reported by Rai Bahadur Lala Ganga Ram Soni, Sessions Judge, Multan, with his No. 77-J. of 1922.*

ABDUL AZIZ, for petitioners.

BADAR-UD-DIN *Kureshi* for SHAH NAWAZ, for Respondent.

*The order of the Sessions Judge forwarding the case for the orders of the High Court*

The accused petitioner filed a revision of the order, dated 15th February 1922 of *M. Muhammad Shafi*, exercising the powers of the Magistrate, 1st Class, in the District of Multan, declaring the complainant entitled to possession of the house until evicted therefrom and forbidding all disturbance of such possession until such eviction by holding proceedings under section 145, Criminal Procedure Code.

*The facts of this case are as follows:—*

On 17th February 1921, *Mussammal Allah Wasai* presented an application under section 145, Criminal Procedure Code with regard to a house. After

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preliminary inquiry, the Magistrate passed, on 8th April 1922, an order under section 145, clause (1). In response to the notice of the Magistrate, the other party appeared in the Court. The parties, however, referred the dispute to an arbitrator and stated before the Magistrate on 20th May 1921, that the dispute had been referred to arbitration and that they did not want to proceed further with the case, and thereupon further proceedings were stopped by the Magistrate, and the papers were consigned to the Record office. The arbitrator, however, did not do anything and on 1st July 1921, *Mussammat Allah Wasai* presented a fresh application under section 145, Criminal Procedure Code. The Magistrate treated this application as a continuation of the previous application and passed an order in favour of *Mussammat Allah Wasai*.

*The proceedings are forwarded for revision on the following grounds :—*

Ghulam Muhammad and others have filed an application for revision of the order of the Magistrate, and it has been contended on their behalf that the order in question is illegal and was passed without jurisdiction. B. S. N. Ghosh, *Vakil* for the respondent, has urged that under section 435 clause (3), Criminal Procedure Code, the order in question, which was passed under Chapter 12, Criminal Procedure Code, is not open to revision. On behalf of the petitioners, it is contended that an order passed under section 145, Criminal Procedure Code, is open to revision if the order was passed without jurisdiction and is illegal and in support of this contention he has cited the following authorities :—

*Dewan Chand v. Queen-Empress* (1), *Dhani Ram v. Bholu Nath* (2), *Ahdulla Khan v. Gunda* (3), *Haidar Shah v. Crown* (4), *Sri Ram v. Faujdar Singh* (5), and *Mussammat Budhan v. Ram Rakha Mal* (6).

A perusal of these authorities shows that the High Court will interfere when there are grave irregularities and when the order passed by the Magistrate is without jurisdiction.

(1) 2 P. R. (Cr.), 1899 (F.B.).

(2) 23 P. R. (Cr.) 1902.

(3) 7 P. R. (Cr.) 1907.

(4) 24 P. W. R. 1910.

(5) 33 P. W. R. 1912.

(6) 139 P. L. R. 1915.

Thus we have to see whether the order in question is illegal and was passed by the Magistrate without jurisdiction. It has been stated above that the first application was struck off the file at the request of the parties on 20th May 1921, and that a fresh application was put in on 1st July 1921. The Magistrate treated the fresh application as a continuation of the previous application and the counsel for the respondent contended that this revival of proceedings by the Magistrate was correct and in accordance with law. This view of law, however, is not correct. In *Tarini Charan Chowdhry v. Amulya Ra'an Roy* (1) it was held that proceedings under section 145 cannot be renewed after the dispute has been settled and an order has been passed that the case be struck off. In the same case it was held that under such circumstances new proceedings would not be justified only on the materials upon which the proceedings struck off was based. Of course it was open to *Mussamat Allah Wasai* to take fresh proceedings, but in order to do so it would be necessary to set forth new materials in the application. The application, dated 1st July 1921, does not disclose any fresh material and as stated above, it was merely an application for reviving the old proceedings which had been struck off the file.

Under these circumstances, the Magistrate had no power to revive the old proceedings and to pass any order under section 145, Criminal Procedure Code. In my opinion, the order passed by the Magistrate is illegal and *ultra vires* and I, therefore, submit the records to the High Court with the recommendation that the order of the Magistrate may be set aside. It may be noted here that the order has not as yet been carried out.

SIR SHADI LAL C. J.—On the 17th February 1921, *Mussamat Allah Wasai* made an application under section 145, Criminal Procedure Code, against Ghulam Muhammad and his sons, and after a preliminary inquiry the Magistrate issued on the 8th April 1921, an order under sub-section (1) of that section. It appears that on the 20th May the parties appeared before the Magistrate and stated that the dispute had been referred

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(1) (1903) I. L.R. 20 Cal. 1867A

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to arbitration and that they did not wish to proceed further with the case. Thereupon, the Magistrate passed an order "consigning the case to the record room."

On the 1st July, 1921, *Mussammal* Allah Wasai presented another application under section 145, Criminal Procedure Code, and the Magistrate has treated this application as a continuation of the previous application and passed a final order against Ghulam Muhammad and his sons.

Now, it is laid down in *Tarini Charan Chowdhry v. Amulya Batai Roy*(1) that proceedings under section 145 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. It is perfectly clear that if the second application is to be treated as a fresh application, then it must fail on the short ground that *Mussammal* Allah Wasai was not in possession of the property either at the date of the order referred to in section 145 (4) or within two months next before the date of such order. Further, it does not appear that there was any likelihood of a breach of the peace.

Accordingly I accept the recommendation made by the Sessions Judge and set aside the order passed by the Magistrate under section 145, Criminal Procedure Code, against Ghulam Muhammad and his sons.

M. R.

*Revision accepted.*

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(1) (1893) I. L. R. 20 Cal. 867.