

## REVISIONAL CRIMINAL.

*Before Mr. Justice Martineau.*

HAKAM AND OTHERS—PETITIONERS,

*versus*

RALIA RAM AND SUNDAR DAS (COMPLAINANTS)—  
RESPONDENTS.

Criminal Revision No. 1201 of 1922.

*Criminal Procedure Code, Act V of 1898, sections 145 (1) and 435 (3)—Jurisdiction—where Magistrate has made no order under sub-section (1) of section 145—High Court's power of revision.*

*Held*, that under sub-section (1) of section 145 of the Code of Criminal Procedure it is first of all essential that the Magistrate should be satisfied that a dispute likely to cause a breach of the peace exists and that he should make an order in writing stating the grounds of his being so satisfied, and where, as in the present case, no such order was made at any stage of the proceedings the whole proceedings are without jurisdiction and cannot be regarded as proceedings under section 145.

*Abdulla Khan v. Gunda (1), Tara Chand v. Behari Lal (2) and Dewan Chand v. Queen-Empress (3), referred to and distinguished, also Sukh Lal v. Tara Chand Ta (4), Debi Prasad v. Sheodat Rai (5), In the matter of Chinnappudayan (6), Muhammad Sharif v. Dhanpat Rai (7), Nur Bakhsh v. Crown (8), and Sajad Hussain v. Nanuk Chand (9).*

*Held therefore*, that section 435 (3) of the Code did not preclude the High Court from entertaining an application for revision in the present case.

*Application for revision of the order of Khan Bahadur Munshi Rahim Bakhsh, Additional Sessions Judge, Gujranwala, at Sialkot, dated the 20th July 1922, affirming that of Chaudhri Karam Ilahi, Honorary Magistrate, 1st Class, at Ahmad Nagar, District Gujranwala, dated the 12th June 1922.*

SHAM LAL and AZIZ AHMAD, for Petitioners.

G. C. NARANG and B. N. KAPUR, for Respondents.

(1) 7 P. R. (Cr.) 1907.

(2) 22 P. R. (Cr.) 1916.

(3) 2 P. R. (Cr.) 1899 (F. B.)

(4) (1905) I. L. R. 33 Cal. 68 (F. B.)

(5) (1907) I. L. R. 33 All. 41.

(6) (1907) I. L. R. 30 Mad. 545.

(7) 68 P. L. R. 1914.

(8) 26 P. W. R., 1917.

(9) (1917) 39 Indian Cases 301.

MARTINEAU J.—This is a petition for revision of an order purporting to have been passed under section 145, Criminal Procedure Code. The Magistrate omitted to make the initiatory order required by sub-section (1) of that section, and this omission is the main ground on which the application is based.

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Mr Aziz Ahmad on behalf of the petitioners relies on *Abdulla Khan v. Gunda* (1), *Tara Chand v. Behari Lal* (2) and *Dewan Chand v. Queen-Empress* (3). In the first of those cases a copy of the initiatory order had not been served or published as required by sub-section 3, and in the second case no initiatory order had been made, but in addition to this the Magistrate in both those cases had omitted to take the evidence of the witnesses of the parties, whereas there is no such omission in the present case. *Dewan Chand v. Queen-Empress* (3) is also not a case analogous to the present one.

Dr. G. C. Narang on behalf of the respondents has cited *Sukh Lal v. Tara Chand Ta* (4), *Debi Prasad v. Sheodat Rai* (5). In the matter of *Chinnappudayan* (6), *Muhammad Sharif v. Dhanpat Rai* (7), *Nur Bakhsh v. Crown* (8) and *Sajad Hussain v. Nanak Chand* (9), but those cases also are not exactly in point. In the first the Magistrate had drawn up the initiatory order, but had only omitted to direct the publication of a copy of the order. In the second and third cases also the defects in the proceedings were different from that in the present case. In *Muhammad Sharif v. Dhanpat Rai* (7), although the Magistrate had omitted to record a preliminary order under sub-section (1) of section 145 he afterwards, in the presence of the parties, recorded an order which essentially complied with sub-section (1), and it was for that reason held that the proceedings were not wholly without jurisdiction. The same was the case in *Sajad Hussain v. Nanak Chand* (9) and in *Nur Bakhsh v. Crown* (8) Chevis J. merely followed *Muhammad Sharif v. Dhanpat Rai* (7).

(1) 7 P. R. (Cr.) 1917.

(2) 22 P. R. (Cr.) 1916.

(3) 2 P. R. (Cr.) 1899 (F. B.).

(4) (1905) I. L. R. 33 Cal. 68. (F. B.)

(5) (1907) I. L. R. 30 All. 41.

(6) (1907) I. L. R. 30 Mad. 548.

(7) 68 P.L.R. 1914.

(8) 26 P.W.R. 1917.

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In the present case, however, the initial defect in the proceedings was not remedied subsequently. It is true that at one hearing the Magistrate directed the petitioners to file a written statement, but this was not a sufficient compliance with the requirements of the law. Under section 145 (1) it is first of all essential that the Magistrate should be satisfied that a dispute likely to cause a breach of the peace exists and that he should make an order in writing stating the grounds of his being so satisfied, whereas in this case no such order was passed at any stage of the proceedings. Under sub-section 5 any person interested is entitled to show that no dispute likely to cause a breach of the peace exists, and in such case the order passed under sub-section (1) will be cancelled and all further proceedings thereon will be stayed.

It is clear therefore, that the omission to pass an order under sub-section (1) is not a mere technical defect. Where the Magistrate has not made the initial order prescribed by that sub-section, and has also not made at any subsequent stage of the proceedings an order which essentially complies with the requirements of that sub-section, the proceedings are in my opinion without jurisdiction and cannot be regarded as proceedings under section 145 of the Criminal Procedure Code.

I hold accordingly that section 435 (3) does not preclude this Court from entertaining the application for revision in the present case.

I accept the application, quash the Magistrate's proceedings as having been taken without jurisdiction, and set aside his order.

A. N. C.

*Revision accepted.*