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under section 34 for the hurt that was caused. The learned Sessions Judge on consideration of the evidence and after giving due weight to all the circumstances in favour of the accused, *i.e.*, the delay in making the first information report has found it established that the four petitioners were present and took part in the beating of Miran Bakhsh and they had the common intention of causing hurt to him. In my opinion they have been rightly convicted and the sentences not being excessive I dismiss the petition.

*A. K. C.*

*Revision dismissed.*

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**REVISIONAL CRIMINAL.**

*Before Ram Lall J.*

GURDITTA AND OTHERS—Petitioners,

*versus*

TAJA—Respondent.

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*March 14.*

**Criminal Revision No. 20 of 1938.**

*Criminal Procedure Code (Act V of 1898), SS. 145 (1), (6), 539-B — Breach of peace — finding in preliminary order — repetition thereof in final order — whether essential — Evidence — Appreciation of — by trial Magistrate — Interference by High Court when justified — Local inspection of spot by Magistrate — Memorandum of facts observed at such inspection — use of.*

T. made a complaint against respondents under s. 145 of the Criminal Procedure Code alleging that he was in possession of a certain vacant site and that the respondents wanted to take forcible possession of the same which was likely to lead to a breach of the peace. The Magistrate after examining the complainant, made a preliminary order stating that there appeared to be a danger of the breach of the peace and issued notice to the respondents to show cause. The respondents stated that the land had been acquired by them about 30 years ago and they put forward an entry in an old *bahi* as evidence of that transaction. Both sides produced evidence in support of their respective possessions. The

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Magistrate was unable to follow the plans put in by the parties. He inspected the spot personally in presence of the parties and ordered a better plan to be prepared and ultimately declared T. to be in possession. The respondents put in a petition of revision from that order and the Sessions Judge recommended to the High Court that the order of the Magistrate be set aside stating, *inter alia*, the following grounds:—

(*i*) That the Magistrate gave no finding that there was any apprehension of a breach of the peace; (*ii*) that the evidence did not prove that there was any such apprehension in fact; (*iii*) that the Magistrate decided the case as the result of his personal observations on the spot.

*Held*, that inasmuch as the Magistrate in his preliminary order had specifically found that the dispute was likely to cause a breach of the peace it was not necessary for him to repeat the same in his final order. And once a Magistrate is satisfied, before making a preliminary order, that a dispute exists regarding land or water, his subsequent action relates to procedure and not jurisdiction and is not liable to be set aside on revision by the High Court.

*Kamal Kutty* v. *Udayavarma Raja Valia Raja of Chirakkal* (1), *Ganga Ram* v. *Murad Shah* (2), and *Ranade Ranjan Bhattacharjee* v. *Bharat Chander Saha* (3), referred to.

*Held also*, that the duty of weighing evidence is one purely for the trial Magistrate and the High Court will not lightly interfere with the finding of a Magistrate when it is based on evidence. And in the present case not only there was evidence on the record to support the Magistrate's finding but the circumstances pointed in the same direction.

*Held further*, that the right of a Magistrate to make a local inspection has now been declared and recognised by s. 539-B of the Code of Criminal Procedure. And under the circumstances of the case there was no irregularity in the procedure adopted by the Magistrate as the inspection note was made by him in the presence of the parties and the case was then put for further arguments and apparently no objection was taken thereto.

(1) I. L. R. (1913) 36 Mad. 275. (2) (1923) 73 I. C. 519.
(3) (1921) 62 I. C. 180.

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*Case reported by* Sardar Sahib Sardar *Gurmukh Singh, Mongia, Sessions Judge, Shahpur at Sargodha, with his No.888-J., dated 23rd December, 1937.*

*Report of Sessions Judge, Shahpur, at Sargodha.*

Sheikh Mohammad Yaqub, Magistrate, 1st Class, Sargodha, passed an order declaring that Taja respondent is in possession of the land in dispute and entitled to remain in possession till evicted therefrom in due course of law.

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

This is a revision against an order passed by a Magistrate, 1st Class, Sargodha, under Section 145, Criminal Procedure Code declaring that Taja is in possession of the land in dispute and entitled to remain in possession till evicted in due course of law. Gurditta, etc., against whom the order was passed have come up to this Court with the present revision :—

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

1. The learned Magistrate has given no finding that there is actually any apprehension of a breach of the peace, and unless that be so, action under Section 145, Criminal Procedure, was not justified.

2. The evidence does not in fact prove satisfactorily that there is any danger or apprehension of a breach of the peace. The oral statements of the three witnesses produced are not very convincing. Two of these witnesses are related to Taja. Mohammad Khan, a nephew of his, is the son-in-law of Mahla, witness No. 2, and the sister's son of Dhala, witness No.3. The oral statements of these witnesses are not supported by any report to the police or any one else, about any previous attacks alleged to have been made by Gurditta, etc., on Taja.

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3. The dispute relates to a small area of about two marlas and is essentially of a civil nature. Taja claims that the land came to him on partition with his brother Raja, while Gurditta, etc., contend that Raja gave his land to them in an exchange.

4. Taja has failed to prove satisfactorily that he is in fact in possession. He relied on the bare statements of three witnesses two of whom are related to him. The present petitioners also produced four witnesses, and there was no reason to prefer Taja's witnesses to these.

5. The Magistrate in fact decided the case in favour of Taja as a result of his personal observation that when he went to inspect the spot, he found some cattle belonging to Taja tethered there. He thus introduced his own evidence into the case which was irregular. The cattle themselves might well have been placed there for his benefit for that particular occasion only.

It is recommended accordingly that the order passed under Section 145, Criminal Procedure Code, may be quashed, and the parties left to settle their dispute in the normal way through the Civil Courts.

*Order of the High Court.*

RAM LALL J.—This is a reference by the learned Sessions Judge of Shahpur at Sargodha recommending that an order passed by Magistrate on the 13th of September, 1937, under section 145 of the Criminal Procedure Code be quashed. I regret I am unable to agree with this recommendation.

The facts which led out this reference may be stated briefly as follows. On the 17th of April, 1937, one Taja, son of Mehra, made a complaint against Guranditta and 7 others under section 145 of the Criminal Procedure Code, alleging that he was in

possession of a certain vacant site and that the respondents, who were influential people, wanted to take forcible possession of the same, with the result that this attempt was likely to lead to a breach of the peace.

On the 21st of April, 1937, the Magistrate examined the complainant and made a preliminary order saying that there appeared to be a danger of the breach of the public peace owing to disputes relating to property and he issued notice to the respondents to show cause. The respondents appeared and stated that the land in dispute had been acquired by them in exchange from the brother of the complainant, 30 years or more ago, and they put forward an entry in an old *bahi* purporting to witness this transaction. Taja produced three witnesses who say that the land has always been in his possession and that once before also there had been an attempt by the respondents to take possession by force. One at least of these three witnesses appeared to be disinterested. On the other hand the respondents produced four witnesses the effect of whose statements is that the respondents used to tie their cattle on the land in dispute, on which they have got their own mangers.

After the evidence was concluded the learned Magistrate heard arguments on the 11th of August, 1937. He found difficulty in following the plans put in by the parties and he ordered that he would inspect the spot on the 21st of August. He inspected the spot on that date in the presence of the parties and ordered a better plan to be prepared by the Patwari at the joint expense of the parties, fixing the 26th of August for the proof of this plan and the 30th of August for further arguments in the case. Thereafter he made an order on the 13th of September, 1937, declaring Taja to be in possession.

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Guranditta and the other respondents put in a petition of revision from this order and on this the learned Sessions Judge has made a reference to the High Court recommending that the order of the Magistrate be set aside. The learned Sessions Judge has based his recommendation on the following considerations :—

(*a*) That the Magistrate gave no finding that there was any apprehension of a breach of the peace.

(*b*) That the evidence did not prove that there was any such apprehension in fact.

(*c*) That the dispute related to a small area and was essentially of a civil nature.

(*d*) That the complainant had failed to prove that he was in fact in possession and that there was no reason to prefer his witnesses to those of the respondents.

(*e*) That the Magistrate decided the case on the result of his personal observations on the occasion of his visit to the spot.

So far as the first objection is concerned it is clear that the Magistrate in his preliminary order had specifically found that the dispute was likely to cause a breach of the peace. In my view it was not necessary for the Magistrate to repeat in the final order, which is now the subject of revision that such an apprehension existed. It is now settled that the essential requisite to give the Magistrate jurisdiction under section 145 is that he should be satisfied that a dispute exists regarding land or water before he makes the preliminary order. Once he is so satisfied, his subsequent action relates to procedure and not jurisdiction and in this aspect not liable to be upset on revision by the High Court. Reference in this connection may be

made to "*Kamal Kutty* v. *Udayavarma Raja Valia, Raja of Chirakkal*" (1), "*Ganga Ram* v. *Murad Shah*" (2) and "*Ranade Ranjan Bhattacharjee* v. *Bharat Chander Saha*" (3).

There does not appear to be any substance in the second objection of the learned Sessions Judge either. Once a preliminary order has been properly made by a Magistrate, it is open to the opposite party to show to the Magistrate by evidence that in fact there is no present danger of a breach of the peace. This apparently Guranditta and others were unable to do and the circumstances in the case further convinced the Magistrate that a breach of the peace was likely if an order under section 145 of the Criminal Procedure Code was not made. The High Court will not interfere lightly with the finding of a Magistrate when it is based on evidence and the duty of weighing evidence is one purely for the trial Court. In the present case not only is there evidence on the record to support the Magistrate's finding but circumstances which admittedly exist point in the same direction.

The third objection of the learned Sessions Judge is difficult to follow. That the land is small in area is a neutral consideration and does not help either party and to say that the dispute is one of a civil nature begs the whole question. The Magistrate having found that dispute exists which is likely to lead to a breach of the peace, he merely declares one party to be in possession leaving it to the other to get his title declared by a civil suit. If either party has a good case, I have no doubt that party will obtain a proper decision from a civil Court, but till such a decision can

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be obtained, proceedings under the criminal law are taken to avoid a breach of the peace.

The fourth objection of the learned Sessions Judge I have disposed of already. When he says that there was no reason to prefer the evidence led by one party to that led by the other, he himself supplies a very good reason for not interfering with the order of the trial Court.

The last objection is that the Magistrate decided the case on personal observations and not on evidence. The right of a Magistrate to make a local inspection has now been declared and recognized by section 539-B of the Criminal Procedure Code. The Magistrate found difficulty in following the plans put in by the parties and therefore he, after notice to the parties, made a local inspection in order better to understand the evidence and the topographical conditions. He observed then that the small piece of land in dispute was situate in the middle of a Mohammadan *mohalla*. This fact, coupled with the allegation that Guranditta and his companions were trying to take forcible possession would make a breach of the peace likely. The inspection note was made in the presence of the parties who were in fact made to pay the cost of a more lucid plan, and the case was then put for further arguments. Apparently no objection was taken to the inspection note and I can find no irregularity in the procedure adopted by the Magistrate.

For these reasons I decline to accept the recommendation of the learned Sessions Judge and order that the application for revision put in by Guranditta and others be dismissed and I maintain the order of the Magistrate.

*A. K. C.*

*Reference refused.*