1903
MAY 14.

CIVIL RULE.

30 C. 916.

Babu *Boidya Nath Dutt* for the petitioner.

Dr. *Ashutosh Mukerjee* for the opposite party.

BANERJEE AND PARGITER, JJ. After hearing the learned vakils on both sides, we are of opinion that this Rule must be discharged on the simple ground that the application of the petitioner, which is evidently an application under sub-section 6 of section 195 of the Code of Criminal Procedure, ought to have been made to the Commissioner of the Bhagalpur Division, and not to this Court, regard being had to the provisions of section 15 of Regulation V of 1893, and sub-section 7, clause (*a*) of section 195 of the Code of Criminal Procedure. By sub-section 6 of section 195 any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and sub-section 7 says: "For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie that is to say, where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate." That makes the Court of the Commissioner of the Bhagalpur Division the proper Court to which to make the application.

That being so, we cannot entertain the present application, and the Rule must be discharged with costs.

Rule discharged.

30. C. 918 (=7. C. W. N. 510.)

[918] CRIMINAL REVISION.

MAHOMED NUR *v.* BIKKAN MAHTON.*

[22nd Jan., 1903.]

Evidence—Order unsupported by evidence—Criminal Procedure Code (Act V of 1898) s. 147.

In proceedings under s. 147 of the Criminal Procedure Code, the first party filed their written statement and the Magistrate having declined to give the second party time to file their written statement, made an order under that section in favour of the first party without recording any evidence:—

Held, that the Magistrate ought to have had some evidence in proof of the allegations contained in the written statement; and that there being no such evidence upon which the order could be supported, it should be set aside.

Haro Mohan Sardar v. *Gobind Sahu* (1) distinguished.

THIS was a Rule calling upon the District Magistrate of Patna and upon the first party to show cause why the order of the Sub-divisional Officer of Bihar of the 25th September 1902 should not be set aside on the ground that there was no finding that a dispute likely to cause a breach of the peace existed, and that there was no evidence upon which the order could be supported.

The Sub-divisional Officer of Bihar, on the basis of a police report and a petition filed by one of the first party, drew up proceedings under s. 147 of the Code of Criminal Procedure calling upon the parties concerned to put in written statements of their claims on the 25th September 1902, and to be ready with oral and documentary evidence, so that an inquiry might be held whether the second party had got the right to

* Criminal Revision No. 1185 of 1902 against the order of E. F. Ainslie, Sub-divisional Officer of Bihar, dated Sept. 25, 1902.

(1) (1902) 7 C. W. N. 3.

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put up a dam at the mouth of the canal running west of the Karai reservoir, and whether the second party had got the right to prevent the first party from clearing away the obstructions existing at the mouth of the canal, and meanwhile he directed the issue of notices under s. 144 of the Criminal Procedure Code to both the parties.

[919] On the 25th September the second party filed a petition asking for a fortnight's time in order to file their written statement, but the Subdivisional Officer refused the application. The first party, however, filed their written statement, and the Subdivisional Officer without taking any evidence made an order in their favour permitting them to cut and remove the dam, and directing the second party not to offer any resistance. 30 C. 918=7 C. W. N. 510.

Babu *Umakali Mukerjee* (Maulvi *Mahomed Mustafa Khan* with him) for the petitioners. The order in this case is one under s. 147 of the Criminal Procedure Code, and the Magistrate has made it without having before him any evidence of the facts. In making an order under s. 147, the procedure to be followed is that which is laid down in s. 145. The Magistrate could not make this order without some evidence to prove the allegations contained in the written statement of the other side: *Ram Krista Patra* v. *Aghore Naskar* (1).

Moulvi *Mahomed Ishfak* (Babu *Joy Gopal Ghose* with him) shewed cause. I submit that the Magistrate had jurisdiction to make the order. It has been decided that an order can be made under s. 145 of the Criminal Procedure Code on written statements filed by the parties, without any evidence of any kind: *Haro Mohan Sardar* v. *Gobind Sahu* (2). The Magistrate is not bound under s. 147 to take evidence. He had jurisdiction to make the order he did on the materials that were before him, and he having such jurisdiction this Court cannot interfere.

HARINGTON AND BRETT, JJ. In this case a Rule was granted calling upon the District Magistrate of Patna and upon the first party to shew cause why the order of the Subdivisional Officer of Bihar, of the 25th September last, should not be set aside on the ground that there was no finding that a dispute likely to cause a breach of the peace existed; and that there was no evidence upon which the order could be supported.

The former of the two grounds was not pressed before us in argument, the argument being directed to the latter ground, namely, that the order was made without any evidence of the fact which would justify the Magistrate in making the order **[920]** which he did, under section 147 of the Code of Criminal Procedure.

The judgment was not given at once, because, our attention was drawn to a case (2) by the learned vakil, who appeared to show cause against the Rule, which, he said, established the proposition that an order could be made under section 145 on the written statement filed by the parties without any evidence of any sort whatever. We referred to the case (2), and we find that it is not on all fours with the present case, because, in it an order was made, it is true on the written statement of one of the parties, but it was made on the express admission of the other party; and therefore it is not an authority for the proposition that an order can be made without evidence where the party, who in the ordinary course of things, would oppose the order, does not expressly admit the allegation made by the other party.

(1) (1902) 6 C. W. N. 925.

(2) (1902) 7 C. W. N. 351.

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30 C. 918=7 C. W. N. 510.

In the present case the Magistrate appears to have had before him no evidence of any of the facts which would entitle him to make the order in question. The order in question is in fact made under section 147 in which it is provided that the procedure to be followed in making this order is that which is laid down in section 145. In our view, the Magistrate ought to have had some evidence in proof of the allegation contained in the written statement, and that he ought not to have made the order without having some evidence to that effect before him.

On that ground we set aside the order, and direct that the Magistrate do proceed according to law.

The Rule is made absolute.

Rule absolute.

30 C. 921(=7 C. W. N. 704).

[921] CRIMINAL REVISION.

KEDAR NATH SHAHA *v.* EMPEROR.*

[17th June, 1903.]

Court-fee stamp, sale of—"Sale"—Exchange—Transfer of stamp on promise that one of equal value would be returned—Court-fees Act (VII of 1870) s. 34, cl. (3).

Where a mukhtear who had purchased a court-fee stamp for a client, transferred it to another client, the latter having agreed to return to the mukhtear another court-fee stamp of the same value, and was convicted of an offence under s. 34 of the Court-fees Act :—

Held, that there had been no 'sale' of the stamp within the meaning of s. 34 of the Court-fees Act (VII of 1870), and that the conviction should be set aside.

RULE granted to the petitioner, Kedar Nath Shaha.

This was a Rule calling upon the District Magistrate of Bogra to show cause why the conviction and sentence of the petitioner should not be set aside.

The petitioner, a mukhtear of the Criminal Court, who had purchased a court-fee stamp of the value of 8 annas for a client, transferred the stamp to another client of his who had immediate need of it for the purpose of submitting a petition to the Magistrate. The latter client promised to return to him another court-fee stamp of the same value, when the client for whom the stamp had originally been purchased arrived in Court.

The petitioner was convicted in a summary trial and fined, under s. 34 of the Court-fees Act of 1870, by the Deputy Magistrate of Bogra on the 23rd April 1903. The judgment of the Lower Court was as follows:—

"Summary and Reasons :—

This is case of sale of court-fee stamp under section 34, Court-fees Act.

The accused is a mukhtear of the Criminal Court. He transferred a court-fee stamp to a client of his who had immediate need of it for the purpose of submitting a petition to the Magistrate.

[922] The court-fee stamp of 8 annas was in the hand of the mukhtear, purchased before for another client, but at the time he had no use for it. He therefore transferred it to the new client.

The mukhtear says that this new client promised him to return another court-fee stamp of equal value when the vendor arrived in Court. This statement I accept to be correct, as there is no evidence to the contrary. Now, it is pleaded for the defence that by this transfer of Court-fee the mukhtear has not effected a sale, but only caused an exchange.

* Criminal Revision No. 447 of 1903, against the order of M. K. Bose, Deputy Magistrate of Bogra, dated April 23, 1903.