

30 C. 110 (=6 C. W. N. 881).

[110] CRIMINAL REVISION.

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APRIL 7.CRIMINAL
REVISION.

RAMZAN ALI v. JANARDHAN SINGH.* [7th April, 1902].

Jurisdiction—Attachment of "crops" cut and stored—"Crops or other produce of land," meaning of—Criminal Procedure Code (Act V of 1898) ss. 145 and 146. 30 C. 110=6 C. W. N. 881.

The words "crops or other produce of land" in s. s. (2) of s. 145 of the Criminal Procedure Code mean crops or other produce of land attached to the land. A Magistrate therefore has no jurisdiction under s. 146 of the Code to attach crops, which have been severed from the land and stored.

[*Fol.* 1905 A. W. N. 278=3 A. L. J. 13=28 All. 266; *Dist.* 98 I. C. 319=18 Cr. L. J. 287=1 Pat. L. J. 356.]

THE petitioners, Ramzan Ali and others, obtained a Rule calling on the District Magistrate to show cause why the order purporting to be made under s. 146 of the Criminal Procedure Code should not be set aside on the ground that the matter in dispute relating to moveable property could not be made the subject of such proceedings.

On the report of the Sub-Inspector of the Tikari thanah, dated the 7th June 1901, the Deputy Magistrate of Gaya drew up proceedings under s. 145 of the Code of Criminal Procedure making the petitioners the first party and Janardhan Singh and others the second party, and on the 8th September 1901 passed an order under s. 146 of the Code attaching the subject matter of the dispute, which consisted of certain crops, which had been cut and stored on the threshing-floor.

Babu Joy Gopal Ghosha for the petitioners. Proceedings under Chapter XII of the Code of Criminal Procedure relate only to immoveable property. The order in this case is for the attachment of moveable property—crops which had been cut and stored. The Magistrate has mistaken the meaning of the word "crops" in s. s. (2) of s. 145 of the Code, which means crops that are attached to the land, actually growing on it, and not crops that have been cut and stored.

Mr. P. L. Roy (Babu Karuna Sindhu Mukerjee and Babu Añulya Charan Bose with him) for the opposite party. Under the decision of this Court I am unable to support the order.

[111] STEVENS AND HARRINGTON, JJ. This Rule was issued to show cause why the order purporting to have been made under the provisions of section 146 of the Code of Criminal Procedure with reference to certain crops which had been cut and stored on the threshing-floor should not be set aside on the ground that the matter in dispute was moveable property, which could not be made the subject of proceedings under Chapter XII of the Code of Criminal Procedure. The learned District Magistrate in showing cause has invited our attention to sub-section (2) of section 145, which provides that "for the purpose of this section the expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property." We think it is clear that the learned Magistrate has mistaken the meaning of sub-section (2). Chapter XII, in which section 145 occurs, is headed "Disputes as to immoveable property," and we think it is clear that by "crops and other produce of land" in sub-section (2) are intended to be meant crops or other produce of land attached to the

* Criminal Revision No. 1160 of 1901, against the order passed by S. Ali Ashraf, Deputy Magistrate of Gaya, dated the 18th September 1901.

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land, and not crops which have been severed, as in the present case. The learned Counsel, who appeared on the opposite side, does not contend that the provisions of section 145 can properly be applied to such properties.

It follows that the order which has been made by the Deputy Magistrate in the present case attaching the cut crops, which were the subject-matter of dispute between the parties, cannot stand. The Rule is accordingly made absolute and the order is set aside.

Rule made absolute.

30 C. 112 (=6 C. W. N. 417).

[112] CRIMINAL REVISION.

MANINDRA CHANDRA NANDI *v.* BARADA KANTA CHOWDHRY.*
[26th 27th and 28th February, 1902].

Jurisdiction—Criminal Procedure Code (Act V of 1898) s. 145—Magistrate, power of to stay proceedings and cancel order passed by him under s. s. (1)—Revision—High Court, interference by.

A Magistrate has jurisdiction to cancel an order passed under s. s. (1) of s. 145 of the Criminal Procedure Code and to stay proceeding if he becomes satisfied, whatever the source of information may be, that the state of things does not exist, which alone would give jurisdiction to proceed with the inquiry.

Where therefore a Magistrate, having instituted proceedings and passed an order under s. s. (1) of s. 145 received information, which he believed, that there no longer existed a dispute likely to cause a breach of the peace, and, before any written statement had been filed by either side cancelled his order and stayed the proceedings.

Held, that the High Court could not interfere, as the Magistrate has not acted without jurisdiction.

Tarini Charan Chowdhury v. Amulya Ratan Roy (1) referred to; *Hurbul-Subh Narain Singh v. Luchmeshwar Prasad Singh* (2) distinguished.

[Ref. 17 C. P. L. R. 183; Appr. 17 Cr. L. J. 188=33 I. C. 314.]

On the 10th June 1901 the Subdivisional Magistrate of Kurigram drew up proceedings under s. 145 of the Code of Criminal Procedure making Maharaja Manindra Chandra Nandi, Zemindar of Bahirband, the first party and Gopal Das Roy Chowdhry and others of Bahirband the second party. On the 27th June the first party applied for and obtained fifteen days' time to file his written statement and an Amin was ordered to measure the *chur* in dispute.

On the 24th July the Magistrate passed the following order:—

“Put up after disposal of the police case under ss. 144 and 379 of the Penal Code.”

[113] On the 5th August, before either party had filed any written statement, the Magistrate passed the following order:—

“It transpired in the course of the trial of the case of Asir Mahmud *v.* Kandura Sardar and others under ss. 144 and 379 of the Indian Penal Code, that the tenants of Bahirband ploughed the disputed *chur* and destroyed the crops standing thereon, on the 6th Falgun last, *i.e.*, the day that the Civil Court Amin delivered possession,

* Criminal Revision No. 1009 of 1901, against the order passed by Babu G. C. Dutt, Subdivisional Officer of Kurigram, dated the 5th of August 1901.

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

(2) (1898) I. L. R. 26 Cal. 188.