

On the case coming back to the High Court it was heard before a Division Bench, who on taking the accounts made a decree against the defendants.

The defendants applied for leave to appeal to His Majesty in Council. Babu *Kishori Lal Sarkar* (Babu *Debendra Nath Bagchi* with him) for the petitioners.

Babu *Mohini Mohan Chuckerbutty* for the opposite party.

MACLEAN C.J. This is an application for leave to appeal to His Majesty in Council. The suit is one for contribution, and it has had rather a chequered career. It was originally decided in favour of the plaintiff, and on appeal to this Court the decision of the Court below was modified. There was then an appeal to the Privy Council. It was remanded to this Court by their Lordships of the Judicial Committee in order that accounts might be taken on a certain footing. A Division Bench of this Court has taken those accounts to the best of their ability. Some of the defendants are now dissatisfied with result of the accounts and ask for leave to appeal to His Majesty in Council.

When the case was originally before us we felt a difficulty in holding that the case fell within section 596 of the Code of Civil Procedure, but it subsequently occurred to us that, although the case might not fall within either section 595 or 596 of that Code, a right to appeal to His Majesty in Council might be successfully [965] claimed by the present petitioner under section 39 of Letters Patent, and we directed the matter to be mentioned again on this footing. We think on consideration that this is so: and the case appears to us to fall within that section. It is a final decree of a Division Court of the High Court from which an appeal does not lie to the High Court under clause 15 of the same Letters Patent.

It was suggested that the expression 'a Division Court' in section 39 applies only to a Division Court sitting on the Original Side. We see no good ground for placing so restricted a meaning on those words.

The amount in dispute is over Rs. 10,000, and we therefore think that the applicant is entitled to a certificate under clause 39 of the Letters Patent.

A certificate will therefore be granted.

MITRA, J. I am of the same opinion.

Leave granted.

32 C. 966 (=10 C. W. N. 288 =2 Cr. L. J. 769.)

[966] CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Mookerjee.

SHEORAJ ROY v. CHATTER ROY.*

[20th July, 1905.]

Security to keep the peace—Dispute relating to possession of land—Institution of proceedings—Discretion of Magistrates—Criminal Procedure Code (Act V of 1898) ss. 107, 144, 145.

Where a dispute relating to possession of land is likely to cause a breach of the peace, a Magistrate has a discretion to proceed either under s. 107 or under ss. 144 and 145 of the Criminal Procedure Code.

* Criminal Revision No. 647 of 1905, against the order of A. Hayet, Deputy Magistrate of Mezufferpore, dated 10th June, 1905.

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Saroda Prosad Singh v. Emperor (1) not followed.

King-Emperor v. Basiruddin Mollah (2) and *Belagal Ramachariu v. Emperor* (3) followed.

[Fol. 94 All. 449 = 9 A. L. J. 582=13 Cr. L. J. 526 = 15 I. C. 798 ; Ref. 36 Mad. 315 = 14 Cr. L. J. 559=21 I. C. 159; 8 Cr. L. J. 170 = 1 S. L. R. 50 ; 10 Cr. L. J. 281= 2 S. L. R. 18.]

RULE granted to the petitioners, Sheoraj Roy and others (second party).

On receiving a police report, dated the 14th May, 1905, a Deputy Magistrate of Mozufferpore instituted proceedings under s. 107 of the Code of Criminal Procedure against the petitioners, who were alleged to have encroached upon the field belonging to Chatter Roy (the first party) by constantly throwing rubbish and sweepings on their *parti* land, the Magistrate being satisfied therefrom that there was a likelihood of a breach of the peace.

The petitioners filed their written statement in due course objecting to the proceedings under s. 107 of the Code on the ground that the alleged dispute being in relation to possession of land, the said proceedings ought not to have been instituted against them, and suggested that the said dispute might form the subject matter of a proceeding under s. 145 of the Code.

[967] The Deputy Magistrate, to whom the case was transferred for trial, after examining certain witnesses on behalf of the first party adjourned the hearing of the case to the 28th June, 1905.

The petitioners in the meantime moved the High Court to quash the said proceedings under s. 107 of the Criminal Procedure Code mainly on the ground that the Magistrate should have taken action under s. 145 of the Code, the dispute being in relation to possession of land, and obtained this Rule.

Mr. *Sinha* (Babu *Dasharathi Sanjal* with him) for the petitioners. Upon the authority of *Saroda Prosad Singh v. Emperor* (1), the proceedings under s. 107 of the Criminal Procedure Code are inapplicable to a case like this, the dispute being in respect of possession of land. The Magistrate should have proceeded under s. 145 of the Code: see also *Dolegobind Chowdhry v. Dhannu Khan* (4), and *Bidhu Bhusan Chatterji v. Annoda Churn Kanangui* (5).

RAMPINI AND MOOKERJEE JJ. This is a Rule calling upon the District Magistrate of Mozufferpore to show cause why the proceedings against the applicant under section 107 of the Code of Criminal Procedure, should not be quashed according to the ruling in the case of *Saroda Prosad Singh v. The Emperor* (1).

It appears that a dispute likely to cause a breach of the peace has occurred about some land, in which the applicants are concerned, and that the Magistrate has taken proceedings against them under section 107 of the Code of Criminal Procedure.

The Rule has been granted on the strength of the case of *Saroda Prosad Singh v. Emperor* (1) already mentioned, in which it has been held that proceedings under section 107 of the Code of Criminal Procedure, cannot be properly instituted in such a case. The authority of this ruling has, however, been much lessened by the ruling in the case of the *King-Emperor v. Basiruddin Mollah* (2), in which it has been held that the mere

(1) (1903) 7 C. W. N. 142.
(2) (1903) 7 C. W. N. 746.
(3) (1902) I. L. R. 26 Mad. 471.

(4) (1897) I. L. R. 25 Cal. 559.
(5) (1902) 6 C. W. N. 833.

fact of a dispute likely to lead to a breach of the peace, being a dispute [968] relating to the possession of land, may not be sufficient to preclude the Magistrate from taking proceedings under section 107 of the Code of Criminal Procedure. It was further held by one of the Judges, who heard that case, that it cannot be held, as a general rule, that by the provisions of the Criminal Procedure Code a Magistrate is deprived of jurisdiction under section 107 of the Code of Criminal Procedure, in a case in which the dispute likely to cause a breach of the peace relates to possession of land.

The same has also been held in the case of *Belagal Rama Charlu v. Emperor* (1) in which it has been said that where a defendant has been found by a Magistrate to be in possession of land about which a dispute occurs, the Magistrate is not bound to act under sections 144 and 145, but has a discretion to proceed either under section 107 or under sections 144 and 145 of the Code.

On the strength of this ruling then, we do not think that the proceedings of the Magistrate were illegal or that they should be quashed.

The Rule is accordingly discharged.

Rule discharged.

32 C. 969 (=3 Cr. L. J. 106.)

[969] CRIMINAL REVISION.

Before Mr. Justice Pargiter and Mr. Justice Woodroffe.

MATILAL PREMSUK v. KANHAI LAL DASS.*

[2nd June, 1905.]

Trade-mark—False or counterfeit trade-mark, use of—Penal Code (Act XLV of 1860), ss. 482, 486—Merchandise Marks Act (IV of 1889), s. 6.

K, a merchant of Calcutta, ordered certain goods from Europe, but refused to take delivery of the consignment on its arrival in Calcutta.

The goods were thereupon sold in the market with the labels of the firm of *K* attached thereto, and were purchased by *M*, a dealer in piece-goods.

M sold the goods without removing the labels of *K*, and was convicted under s. 486 of the Penal Code for selling the goods with a counterfeit trade-mark:—

Held, that no offence was committed by *M* either under s. 482 or s. 486 of the Penal Code.

RULE granted to Matilal Premasuk, the accused.

The petitioners of the firm of Matilal Premasuk carried on business as piece-goods merchants in the town of Calcutta. They purchased 13 cases of woollen shawls bearing labels of "K. L. Dass and Sons," from Messrs. Kerr Tarruck & Co., a well-known mercantile firm in Calcutta.

The goods were made in Germany to the order of Kanhai Lal Dass and sons (Kanhai Lal Dass being the complainant), who declined to accept them on the ground that the consignment was overdue. The goods were then forwarded to Kerr Tarruck & Co. with instructions to dispose of them in the market, after removing the trade-mark labels of the said K. L. Dass and Sons therefrom. Kerr Tarruck & Co. sold the goods to the accused, but omitted by mistake, to direct the latter to remove the labels at the time of the sale.

* Criminal Revision No. 275 of 1905, against the order of D. H. Kingsford, Chief Presidency Magistrate of Calcutta, dated January 27, 1905.

(1) (1902) I. L. R. 26 Mad. 471.

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