for enlarging the syphons or adopting other measures, consistent with the public convenience, which shall enable him to secure a larger and more continuous flow of water into his *pynes*.

Rule discharged.

1904
MAY 10, 19.

CRIMINAL REVISION.

32 C. 930=2 Cr. L. J. 762.

32 C. 935 (=9 C. W. N. 864=1 C. L. J. 216=2 Cr.L. J. 215.)

[935] CRIMINAL REVISION.

Before Mr. Justice Henderson and Mr. Justice Geidt.

KAROOLAL SAJAWAL *v.* SHYAM LAL.*
[21st and 22nd February, 1905.]

Magistrate—Jurisdiction—Tenant—Sub-tenant—Omission to state material facts in the order—Criminal Procedure Code (Act V of 1898) s. 144.

Before a Magistrate can take action under s. 144 of the Criminal Procedure Code he must be of opinion that immediate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in the order.

Where therefore, a Magistrate passed an order directing the second party not to interfere with the first party in the cultivation of his *khas* lands or the collection of rents from his under-tenants, and it did not appear from the proceedings that he was of opinion that immediate prevention or speedy remedy was necessary and the order made did not state the material facts of the case :

***Held* that the order was bad and must be set aside.**

[Ref. 11 C. W. N. 223 ; 14 C. W. N. 234=11 Cr. L. J. 49=5 I. C. 154.**]**

RULE granted to Karoolal Sajawal and others, second party.

On the 22nd December 1904 Shyam Lal, the first party, filed a petition before the Joint Magistrate of Monghyr stating that he held certain bighas of *jote* lands settled with him by a former manager of the Banaili Raj, but that the present manager was trying to turn him out of his holding, and had told him that he had no legal status, the settlement with the former manager being invalid ; that the peons of the Raj had prevented his servants from reaping his paddy; that some sub-tenants of his were sent for by the manager and asked to take settlements of his *jote* lands direct and to loot his crops; that having failed to induce the under-tenants to do so, the manager had sent Mr. Bray, the Circle officer of the Raj, to get his crops looted with the aid of the zemindari peons ; that Mr. Bray had ordered the peons to arrest him, his servants and under-tenants, to bring them into his camp and to beat **[936]** them in order to compel them to loot the crops. He further alleged that his servant had been arrested, taken into camp and beaten, that he himself was in fear of his life and property, and that the raiyats of the village were ill-treated and harassed severely, in consequence of which he and his servant had lodged two complaints before the Deputy Magistrate against Mr. Bray and the peons ; that his crops were still uncut and he was in fear of life and property ; that as the second party were determined to get the crops looted, there was an apprehension of a serious breach of the peace ; and that the local police deputed to prevent a breach of the peace had not yet taken any steps to do so. He, accordingly, prayed for the issue of an order under s. 144 of the Criminal Procedure Code to prohibit the second party from committing a breach of the peace or from opposing

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* Criminal Revision No. 89 of 1905 against the order of G. J. Monahan, Joint Magistrate of Monghyr, dated January 6, 1905.

1905 FEB. 21, 22.

CRIMINAL REVISION.

32 C. 935=9 C. W. N. 864 =1 C. L. J. 216=2 Cr. L. J. 215.

his servants and sub-tenants in reaping his paddy. The Magistrate thereupon passed the following order:—

"Issue notice under s. 144 to the second party not to commit a breach of the peace. Meantime the crops must be cut by the police in the presence of both parties and deposited with a third party. Both sides should appear here on the 6th January."

A notice was issued upon the second party on the 23rd December to the effect that as it appeared that they were about to create a quarrel (*dunga takrar*) with the first party, in respect of some 325 bighas of land and the crops thereon, to the danger of the peace, they were thereby ordered not to quarrel (*dunga takrar*) with the first party; but that if they had objections, they should appear in Court on the 6th January.

The petitioners put in their written statements on the 6th instant denying having opposed the reaping of the paddy by the first party, and alleging that the crops on the disputed land had been peacefully harvested before the issue of the notice under s. 144, that there was no breach of the peace possible in connection therewith, and that an order under that section was, therefore, wholly unnecessary.

They further submitted that the first party had cultivated only a small portion of the *jote*; that the bulk of the cultivation was done by the under-tenants from whom he collected rents as a middle-man, and that his holding was in the nature of an *ijara* terminable at the instance of the proprietors; that the crops actually [937] cultivated by him had been cut without opposition before his petition of the 22nd December, and as to the crops grown by the under-tenants, that he had no right to reap the same; that, as the holding of the first party was not permanent and the proprietors unwilling to allow it to continue, the actual cultivators of the land desired to take settlements direct from the landlord, many of them having so attorned; and that for this reason the first party had caused these proceedings to be instituted. They also denied the arrest of the first party's servants and tenants.

The Magistrate, after perusing the statements and hearing the parties, made the order absolute, on the same day, in the terms set forth in the judgment of the High Court. The petitioners then obtained the present Rule.

The District Magistrate in his Explanation pointed out that the order made absolute on the 6th January was that of the 23rd December previous which was merely "not to quarrel with the first party." He submitted that the order was bad as not disclosing why immediate prevention was necessary, and as not specifying a "certain act."

Mr. *Garth* (with him Mr. *P. L. Roy*, Babu *Dasarathi Sanyal* and Moulvi *Syed Mahomed Tahir*) showed cause. The order of the Magistrate under s. 144 of the Criminal Procedure Code is one, which it was within his jurisdiction to pass. The direction to the second party not to interfere with the first party in the cultivation of his *khas jote* and in his collection of rents from the under-tenants is a direction to abstain from a "certain act," which is definite in its nature. The District Magistrate has in his Explanation taken a different view of the order, but his construction of s. 144 is not sound. The case of *Abayeswari Debi* v. *Sidheswari Debi* (1) is distinguishable as the order there was indefinite throughout. [HENDERSON, J. Is it not necessary to state in the order that immediate prevention or speedy remedy is desirable?] I submit it is not. If the Magistrate has sufficient materials before him to come to the conclusion that

(1) (1888) I. L. R. 16 Cal. 80.

1905
FEB. 21, 22.
CRIMINAL REVISION.
32 C. 935=9 C. W. N. 864 =1 C. L. J. 216=2 Cr. L. J. 215.

immediate prevention or speedy remedy is desirable, he is empowered by the section to take action thereunder. The petition of Shyam [938] Lall, the first party, discloses ample grounds for such an opinion. The Magistrate is not bound to record in his order that immediate prevention or speedy remedy is desirable. The language of the section is different in this respect from that of s. 145 (1), where the Magistrate has to state in the initiatory order the grounds of his being satisfied as to the likelihood of a breach of the peace before he can proceed further. Section 144 requires the order to state the "material facts of the case," and this he has done. His powers are very wide: See *In the matter of Bykuntram Shaha Roy* (1); *Palaniappa Chetti* v. *Dorasami Ayyar*. (2). In *Tekait Kunj Behari* v. *Bhiko Singh* (3) the High Court held an order under the section "not to interfere with the things above mentioned" to be right.

Mr. *Jackson* (with him Babus *Saligram Singh* and *Sailendra Nath Palit*) for the petitioners. The order is indefinite and beyond the scope of s. 144. The case of *Abayeswari Debi* v. *Sidheswari Debi* (4) is in point. If the Magistrate omits to state in his order that immediate prevention or speedy remedy is desirable, the order is bad. See *In the matter of Krishna Mohun Bysack* (5), *Chunder Coomar Roy* v. *Omesh Chunder Mojoomdar* (6).

HENDERSON AND GEIDT, JJ. This rule was issued with regard to an order, dated the 6th January last, purporting to have been, made by the Joint Magistrate of Monghyr under s. 144 of the Code of Criminal Procedure.

It appears that on the 22nd December 1904 Shyam Lall, the first party, filed a petition alleging, amongst other things, that the petitioners, who are servants of the Banaili Raj, under orders from Babu Siva Sankar Sahai, the manager, and Mr. Bray, a Circle officer of the Raj, were about to loot crops standing on certain land, which he claimed as his *jote* under a settlement with a former manager of the Raj, that the manager had told him that he had no legal status under the settlement made with the former manager, that, pressure was being put upon the raiyats to loot the crops and to take a settlement direct from the Raj.

[939] The Joint Magistrate thereupon made the following order:—"Issue notice under s. 144 to the second party not to commit a breach of the peace. Meantime the crops must be cut by the police in the presence of both parties and deposited with a third party. Both sides should appear here on January 6th."

On the 6th January the petitioners, who with the manager and Mr. Bray are described as the second party, filed a petition before the Joint Magistrate denying that they had ever opposed the reaping of the crops, or that there had been any disturbance or likelihood of a breach of the peace, and alleging that the crops had already been cut and peacefully harvested, and submitting that, as there was no paddy on the land, an order under s. 144 of the Criminal Procedure Code was wholly unnecessary. They also alleged that the holding of Shyam Lal was in the nature of an *ijara* and was terminable at the instance of the landlord, who was unwilling to allow it to continue; that many of the raiyats had already taken a settlement direct from the Raj.

After hearing the parties the Joint Magistrate on the 6th January made the following order:—"I have heard the parties. It seems that

(1) (1872) 10 B. L. R. 434.
(2) (1895) I. L. R. 18 Mad. 402.
(3) (1900) 5 C. W. N. 329.
(4) (1888) I. L. R. 16 Cal. 80.
(5) (1877) 1 C. L. R. 58.
(6) (1874) 22 W. R. Cr. 78.

1905
FEB. 21, 22.

CRIMINAL REVISION.

32 C. 935=9 C. W. N. 864 =1 C. L. J. 216=2 Cr. L. J. 215.

Shyam Lal is a non-occupancy raiyat of the disputed land, and the first party, without ousting him according to law, have tried to settle the lands with some of his under-raiyats. This they are not entitled to do. They must not, therefore, interfere with him in the cultivation of the land in his *khas jote* or the collection of the rent from the under-tenants. Mr. Bray and Babu Sew Shankar Sahai have not appeared to-day. I myself think it unlikely that they will commit a breach of the peace. I shall not make the order against them absolute. I shall fix the 16th January for hearing any objection they may urge personally or by pleader. Meantime I shall make the notice absolute against the other members of the second party."

A Rule was issued to the District Magistrate and to the opposite party to show cause why, so much of the order as directs the petitioner not to interfere with the first party as to cultivation of the land in his *khas jote* or the collection of rent from the under-tenants should not be set aside, or why such other order as to this Court might seem fit should not be made. The Magistrate of the District has submitted that the order is bad on various grounds; [940] the only one to which we need refer being that it did not disclose why immediate prevention was necessary so that a proceeding under s. 144 rather than under s. 145 of the Criminal Procedure Code should be taken.

The order has been attacked on various grounds. It is unnecessary to discuss these in detail, for we think it must be set aside on the one ground that it does not appear from the proceedings that the Joint Magistrate was of opinion that immediate prevention or speedy remedy was necessary, and the order made does not state the material facts of the case as required by the section.

Before a Magistrate can take action under s. 144 he must be of opinion that immeditate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in the order. This he has not done.

In showing cause against the Rule, Shyam Lal, the first party, filed an affidavit; but even there it is not denied that the crops had been cut peaceably and had all been removed before the order of the 6th January was made, nor was it denied that his tenure was terminable at the option of the landlord.

The Rule is made absolute.

Rule absolute.

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32 C. 941 (=9 C. W. N. 1006=2 Cr. L. J. 764.)

[941] CRIMINAL REVISION.

Before Mr. Justice Pargiter and Mr. Justice Woodroffe.

KHODA BUX *v.* BAKEYA MUNDARI.*
[31st May and 1st June, 1905.]

Cheating—Deception—False representation—Conduct—Penal Code (Act XLV of 1860) s. 415.

To constitute the offence of cheating under s. 415 of the Penal Code, it is not necessary that the deception should be by express words, but it may be by conduct, or implied in the nature of the transaction itself.

* Criminal Revision No. 249 of 1905, against the order passed by W. Maude, Deputy Commissioner of Ranchi, dated Feb. 18, 1905.