

1869
Sept. 22.

Before Mr. Justice Normam and Mr. Justice Kemp.

IN THE CASE OF KASHI KISHOR ROY AND ANOTHER (1ST PARTY)
v. TARINI KANT LAHORI (2ND PARTY).*

Act XXV. of 1861, s. 318—Jurisdiction of Magistrate—Likelihood of a
Breach of the Peace.

A Magistrate has no power to decide a question of possession, under section 318, Act XXV. of 1861, until he has recorded a proceeding stating the grounds of his being satisfied that the dispute for possession is likely to induce a breach of the peace.

This case was referred to the High Court for revision by the Officiating Magistrate of Mymensing, on the following grounds :

1st.—That no proceeding was recorded. The nathi of the case contains no proceeding, and the Deputy Magistrate who decided the case gives as an explanation on that point that he had ordered a formal proceeding to be written ; but cannot say it was so written. There is no such order to be found in the case.

All the late decisions make the drawing up of a proceeding indispensable, and on this ground alone the case appears to me to be bad. *Queen v. Runjit Molla* (1) ; *Harvey v. Brice* (2) ; *Amrith Nath Jha v. Ahmed Reza* (3) ; *Mussamut Anunda Kooer v. Rani Sonnaet Kooer* (4). There is one case, *In re Mussamut Zahoorn* (5), expressing a contrary view of the law ; but it has, I conceive, been overruled by the subsequent decisions.

2nd.—That the Police Report, on which the order was given, does not show that any breach of the peace was likely.

On this point the Deputy Magistrate states that the Police Report in question did show that a breach of the peace was likely. In the end of the Police Report are the words a "breach of the peace is not improbable," and although this expression of opinion does not seem borne out by the evidence of the witnesses, as shown in the Report, still I think it was sufficient to take action on.

*Reference under section 431 of the Code of Criminal Procedure.

(1) 2 W. R., Cr. Rul., 31,

(4) 9 W. R., Cr. Rul., 61,

(2) 4 W. R. Cr. Rul., 26

(5) 6 W. R., Cr. Rul., 4.

(3) 6 W. R., Cr. Rul., 61.

3rd. That the report of a Police Officer is not sufficient to justify action under section 318.

I think that under section 285 Police Reports are considered credible information, and I conceive that they must be considered to satisfy a Magistrate under section 318. The fourth objection about the hearing of witnesses does not seem to have much force.

Baboo *Srinath Dass* and *Ramesh Chandra Mitter* for 1st party.

Baboo *Nalit Chandra Sen* and *Hem Chandra Banerjee* for 2nd party.

NORMAN, J.—This is a proceeding by the Deputy Magistrate of Jumalpoore in Mymensing, by which one Tarini Kant Lahori has been maintained by the Deputy Magistrate in possession of some disputed land under section 318 of the Code of Criminal Procedure. This case has been sent up to this Court under section 434, Code of Criminal Procedure, by the Magistrate Mr. O’Kinealy.

Several objections are taken to the regularity of the Deputy Magistrate’s proceedings. But there is one, and that the first, which is fatal, showing that the Deputy Magistrate proceeded without jurisdiction, and that his order cannot be sustained.

It appears that in consequence of some petition, presented prior to April last, an order was issued to the Police to proceed to the Mofussil, and make some inquiries as to the complaint of Kashi Kishor Roy, one of the parties to the dispute, that some men had been collected by Tarini Kant Lahori with a view to a serious affray, and that a serious affray was likely to occur.

On the 5th of April the Police Officer made his Report. He stated that on the preceding day, that is on the 4th of April, he had been to the spot in question; that he had found no assemblage of persons, and that he had seen nothing to lead him to think that there was any dispute, or likelihood of an affray.

On the 14th of April there was a further Report by the Police, which, after stating, as in the former Report, that there was no

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assembly or disturbance, concludes with the statement, wholly unwarranted by anything in the Report itself, that if a recognizance were not taken, a very serious riot might take place in future with respect to a boundary dispute, which might lead to violence, if not murder.

The Deputy Magistrate makes an order which is endorsed upon that paper. He does not say that he is satisfied that a dispute likely to lead to a breach of the peace existed concerning the land in dispute. He records no proceeding stating the grounds on which he is so satisfied, but he simply orders that the case be registered under section 318, and that the 12th day of May be fixed for the hearing of the several parties. And he directed that notice to that effect be served on the parties. Now it has been pointed out in many cases before this Court, more particularly in the case of *Dewan Elahi Newaz Khan v. Suburunissa* (1), that it is a condition precedent to the powers of a Magistrate to take up and decide a case under section 318, that he should decide judicially that he is satisfied that a dispute likely to induce a breach of the peace exists, and that he should record a proceeding stating the grounds of his being so satisfied. Unless, and until, he shall have decided that preliminary matter, he has no jurisdiction to take up the case, and decide the question of possession under section 318.

In the present case there has been no such decision, and certainly there is no record of the grounds upon which such decision could be based. Therefore it is clear that the order of the Deputy Magistrate adjudicating that Tarini Kant Lahori is in possession, and entitled to retain possession until ousted by due course of law, is an order made without jurisdiction, and is therefore void, and must be quashed.

It would be quite enough for us to say that we are bound by the many decisions of this Court on this point. But we desire to add that we are of opinion that there is a clear reason for requiring a distinct adjudication as to the existence of dispute likely to occasion a breach of the peace before the Magistrate proceeds further. It is intended to prevent the Magistrate from

(1) 5 W. R., Cr. Ru'l., 11.

rashly interfering with questions of possession which should ordinarily be decided by the Civil Courts, unless in cases where a breach of the peace, or the commission of a crime, is apprehended, and where it is necessary for the preservation of the public order that steps be taken by the criminal Court.

We quash the order of the Deputy Magistrate.

KEMP, J.—I am of the same opinion.

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