

CRIMINAL REVISION.

Before Mr. Justice Ghose and Mr. Justice Gordon.

KAILASH CHANDRA PAL AND ANOTHER (PETITIONER) v. KUNJA
BEHARI PODDAR (OPPOSITE PARTY).^o

1897
February 5.

*Criminal Procedure Code (Act X of 1882), section 145—Authority of
District Magistrate—Sub-Divisional Magistrate.*

In a case where a District Magistrate made an order stating that in his opinion it was the duty of the Sub-Divisional Magistrate to institute proceedings under section 145 of the Criminal Procedure Code :

Held, that the District Magistrate had no authority in law to direct the Sub-Divisional Magistrate to institute such proceedings.

Queen-Empress v. Gobind Chandra Das (1), followed.

IN 1894 a dispute arose between the petitioners and the opposite party concerning an orchard, situated in Pergunnah Sovargaon, in the district of Naraingunge. The opposite party alleged that they were in actual possession of a part of the garden by virtue of a deed of sale, dated 30th Joisto 1300, B. S. (12th June 1893) executed in their favour by one Gopi Sardar, the other portion to the extent of one *kani* having been leased out to one Isaff, and that after the purchase they allowed Isaff, who was in occupation at the time, to remain on the portion belonging to him and look after the other portion on their behalf. The petitioners, on the other hand, of whom Isaff was one, alleged that they were in possession of the whole garden, it having been leased out to them by Gopi Sardar, and that the allegations of the opposite party were made in order to dislodge Isaff and turn him out of the garden. Subsequently on 3rd May 1894 there was a riot, and one of the persons present was killed. Kailash Pal absconded, and Isaff and Saber, two of the opposite party, were committed to the Court of Sessions, the former being sentenced to three years and the latter to seven years rigorous imprisonment. On appeal to the High Court Saber's sentence was

^o Criminal Revision No. 478 of 1896 made against the order passed by L. P. Shirres, Esq., District Magistrate of Dacca, dated 15th May 1896, confirming the order passed by L. T. R. Lucas, Esq., Sub-divisional Officer of Naraingunge, dated 19th March 1896.

1897
 KAILASH
 CHANDRA
 PAL
 v.
 KUNJA
 BEHARI
 PODDAR.

reduced, and Isaff's case was ordered to be retried. At the retrial the jury acquitted Isaff, and on a reference to the High Court the acquittal was upheld. Kailash Pal appeared subsequently, and after being committed to the Court of Sessions was acquitted on 11th May 1895. In the meantime on 19th October 1894 an injunction was issued under section 144 of the Criminal Procedure Code against Isaff and Kailash Pal, two of the opposite party. On the reference to the High Court the verdict of the jury to the effect that Isaff was in possession of the garden was upheld, and thereupon a notice was issued under section 144 of the Criminal Procedure Code against the petitioner Kunja Poddar and his men restraining them from entering the garden of Isaff under penalty of prosecution. On the application of Kunja Poddar to the District Magistrate this order was modified by both parties being served with notices restraining them from entering the garden, and the Subordinate Magistrate was directed by the District Magistrate to institute proceedings under section 145 of the Criminal Procedure Code. In the course of these proceedings the Subordinate Magistrate, on 19th March 1896, held that the opposite party were in possession, and that the petitioners had, from the date of the riot, been attempting to take forcible possession. The petitioners thereupon appealed against this order to the District Magistrate, who stated that he saw no reason to interfere; and on 4th February 1897 the petitioners applied to the High Court for a rule to set aside the order of the Subordinate Magistrate.

Mr. *Donogh* for the petitioners.—Under section 145 of the Criminal Procedure Code the Magistrate must be satisfied, from the police report or otherwise, that there are good grounds for proceeding under this section. The District Magistrate cannot order him to take action under this section. If he does so, it does not leave the Deputy Magistrate any discretion in the matter. *Queen-Empress v. Gobind Chandra Das* (1), *Ram Chandra Das v. Monohur Roy* (2). The dispute has always been between Isaff and the opposite party Kunja Behari, and the petitioner Kailash Chandra Pal has always stated that he was not in possession at any time. He has been made a party to the proceedings against his will. The order could not be binding on Kailash Chandra Pal. *Queen-Empress v. Kupayyar* (3).

(1) I. L. R., 20 Calc. 520.

(2) I. L. R., 21 Calc., 29.

(3) I. L. R., 18 Mad., 51.

Mr. P. L. Roy for the opposite party.—It is clear that, as far as the Subordinate Magistrate was concerned, he thought no proceedings should be taken under section 145, because on 9th October 1894 he made an order under section 144. As on 4th June 1895 he made another order under the same section (144), prohibiting Kunja Behari from interfering with the land, the Magistrate of the district was of opinion that it was the duty of the Subordinate Magistrate to institute proceedings under section 145, and he accordingly modified the order of 4th June 1895. Acting on this order the Subordinate Officer on 14th August 1895 instituted proceedings under section 145. The case cited of *Queen-Empress v. Gobind Chandra Das* (1) does not apply to the case of a District Magistrate. The District Magistrate merely stated that he was of opinion that it was the duty of the Sub-Divisional Officer to institute proceedings under section 145. He did not direct his Subordinate Officer to do so. There is nothing in the section of the Code or in any other section preventing a District Magistrate from passing an order of the kind that he has made in this case.

1897
 KAILASH
 CHANDRA
 PAL
 v.
 KUNJA
 BEHARI
 PODDAR.

The following judgment was delivered by the High Court (GHOSH and GORDON, JJ.):—

We think that this rule should be made absolute, upon the first ground mentioned in the order of this Court, dated the 27th July last.

It is quite clear that, so far as the Sub-Divisional Magistrate of Naraingunge is concerned, he thought that no proceedings should be taken under section 145 of the Code of Criminal Procedure, for the order that he made on the 19th October 1894 was an order under section 144 of the Code, prohibiting Isaff from interfering with the land which is the subject-matter of the dispute between the parties; and we further find that on the 4th June 1895 he made another order under the same section (144), similarly prohibiting Kunja Behari, the opposite party before us, from interfering with the land in question. The Magistrate of the district, however, on the 23rd July 1895, was of opinion that it was the duty of the Sub-Divisional Officer to institute proceedings under section 145, and he accordingly modified the said order of the 4th June 1895.

(1) I, L. R., 20 Cal., 520.

1897

KAILASH
CHANDRA
PAL
v.
KUNJA
BEHARI
PODDAR.

Acting upon this order of the Magistrate of the district, the Sub-Divisional Officer, on the 14th August 1895, instituted proceedings under section 145. That order runs thus: "Whereas it has been made to appear to me that a dispute likely to lead to a breach of the peace is likely to take place between Kunja Behari Poddar on one side and Kailash Chandra Pal and Isaff on the other, regarding possession to a garden bounded as follows: North by Khajobargora khal, south by another khal, east by Gora khal of Bari Bedyananda and Isaff arable (Tangita) land, west by Bugmuchi khal, it is ordered that the above parties put in written statements in person or by pleader on the 30th August 1895 regarding their respective claims of actual possession about the said garden with any other evidence they may have to offer, and that until the Court orders what party is in possession, no party shall go to the said disputed land under penalty of prosecution." Now there was no police report or other information before the Sub-Divisional Officer at the time, upon which he could take proceedings under section 145; and, indeed, it is patent that his proceeding of the 14th August 1895 was entirely based (though he does not say so in so many words) upon the order of the District Magistrate of the 23rd July 1895. The question then arises whether the District Magistrate had authority in law to direct the Sub-Divisional Officer to institute proceedings under section 145. We think there is nothing in the Code of Criminal Procedure, or in any other law, authorizing the Magistrate of the District in this case to direct proceedings being taken under section 145. The Officer to whom such direction was given was a Sub-Divisional Officer, and it was entirely discretionary with him either to take proceedings or not under that section as he thought proper. We have already said that, so far as he was concerned, he was of opinion that proceedings should be taken under section 144, and not under section 145; and we think that the District Magistrate had no authority over him in this respect. *Queen Empress v. Gobind Chandra Das* (1).

The rule will accordingly be made absolute.

C. E. G.

Rule made absolute.

(1) I. L. R., 20 Calc., 520.