

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Grant.

GOLUCK CHANDRA PAL AND OTHERS (PETITIONERS) *v.* KALI CHARAN
DE (OPPOSITE PARTY.)*

1886
April 30.

*Criminal Procedure Code, s. 145—Penal Code, s. 188—Disobedience to order
of Public Servant—Inquiry as to possession—Parties to inquiry.*

In May 1883 the District Magistrate of Tipperah held an inquiry as to the possession of certain lands claimed by *A* and *B*, and having found on the evidence taken by him that *A* was in possession, he passed an order on the 21st of May 1883, declaring that *A* was entitled to hold possession of the disputed land until evicted in due course of law, and forbidding *B* and all others to disturb *A*'s possession until such disturbance should be effected in due course of law. Previously to November 1885, *B* sold an eight-anna share of his interest in the disputed land to *C*, who at the time of his purchase had notice of the order of the 21st of May 1883. In November 1885, *B* and others went to the disputed lands, and attempted to turn *A* out of possession by force, and to compel the tenants of the lands to pay rent and give kabuliats to *B* and *C*. At the time that *B* and his companions went to the disputed land, the latter were aware of the order of the 21st of May 1883, though none of them was a party to the inquiry then made by the District Magistrate. In December 1885, they were all tried and found guilty of disobedience to an order duly promulgated by a public servant. *Held*, that the conviction was right.

Semble, that a reference by a Magistrate to a Police report which clearly sets out the probability of a breach of the peace is a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace, within the meaning of s. 145 of the Code of Criminal Procedure.

In this case one of the accused, Bukshi Shonar, was tried and convicted under s. 15 of the Penal Code for harbouring persons hired for an unlawful assembly, while the others were tried and convicted for disobedience to an order duly promulgated by a public servant under s. 188 of the Penal Code. The facts of the case are as follows :—

Early in 1883, a dispute arose between Kutubudin, one of the accused, and rival zemindars named Nag as to the ownership

* Criminal Revision No. 72 of 1886, against the order passed by Baboo Sarat Chandra Das, Deputy Magistrate of Tipperah, dated the 22nd of December 1885.

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of a certain piece of land of which both parties claimed to be in possession. In May 1883, the District Magistrate, Mr. Hopkins, in consequence of certain reports which he had received from the Police, held a proceeding under s. 145 of the Code of Criminal Procedure, and having come to the conclusion on the evidence that the Nag zemindars were in possession of the disputed lands, he recorded an order declaring that the Nag zemindars "are entitled to retain possession of Jowar Nilakhi," the disputed land, "until evicted in due course of law, and all parties, Kutubudin and all others, are forbidden to disturb such possession until such disturbance is effected in due course of law." This order was passed on the 21st of May 1883. Kutubudin applied to the Sessions Judge to cancel the order of the District Magistrate, but the application was rejected.

Some time before November 1885, Kutubudin sold a moiety of the disputed land to one Abdul Baree, who purchased with full knowledge of the order of the 21st of May 1883, and on the 21st of November 1885, one Kali Charan De, the tahsildar of the Nag zemindars, complained to the District Magistrate that Kutubudin and the other accused had gone in a body to Nilakhi armed with *latties* and spears, and had by force extorted money from the ryots of that place, and forced them to sign kabuliats in favour of Kutubudin and Abdul Baree. The District Magistrate made over the case to the Deputy Magistrate, who found that all the accused, with the exception of Bukshi Shonar, had, with full knowledge of the order of the 21st of May 1883, gone to Nilakhi for the purpose of supporting the claims of Kutubudin and Abdul Baree; he found the charge made by the tahsildar proved as against all but Bukshi Shonar, whom he found guilty of harbouring the others, knowing that they had been employed to become members of an unlawful assembly, and he sentenced them some to imprisonment and some to pay a fine. These findings and sentences were upheld by the District Magistrate on the 7th of January 1886. Thereupon the accused applied to the High Court under the provisions of s. 439 of the Code of Criminal Procedure, and obtained a rule calling upon the other side to show cause why the convictions should not be set aside.

Mr. *Evans* for the petitioners argued (1) that the order of the 21st of May 1883 was not directed to any of the accused; and (2) that order was not a legal one, and the accused were not bound by it. He referred to *Chunder Madhub Ghose v. Jugut Chunder Sen* (1) and *Kunund Narain Bhoop's case* (2).

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Mr. *Gasper* and *Baboo Ambica Charan Bose* for the opposite party.

The judgment of the Court (PRINSEP and GRANT, JJ.) was as follows:—

This is an application made on behalf of twenty-four persons, one of whom, *Bukshi Shonar*, has been convicted under s. 157 of the Indian Penal Code and the others under s. 188. As regards *Bukshi Shonar*, it is sufficient to state that there is evidence which has been believed by the Deputy Magistrate and by the District Magistrate in appeal, which is sufficient for his conviction. There are no grounds for interfering as a Court of Revision in respect of this person.

It appears that in 1883 an order was passed by the Magistrate under s. 145 of the Code of Criminal Procedure in a dispute between certain members of the Nag family and *Kutubudin*, in which it was decided that the former was in possession of certain lands, and it was declared that they were entitled to retain possession thereof until evicted in due course of law, all disturbance of such possession until such eviction being forbidden.

The petitioners are in the service of *Kutubudin* and one who has purchased* a small share of his property which adjoins the land in dispute, or have been engaged by those who represent these persons in the immediate neighbourhood of this land. They have now been convicted under s. 188 of the Indian Penal Code of having disobeyed an order passed in 1883 under s. 145 of the Code of Criminal Procedure, knowing that by this order they were directed to abstain from interfering with the possession of the Nag family.

The first objection raised is that, inasmuch as the order was not directed to them, they have not been properly convicted under s. 188.

(1) 4 C. L. R., 483.

(2) I. L. R., 4 Calc., 650.

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The order in question was no doubt passed in a proceeding to which none of the petitioners were parties, but it was a general order and had the effect of notifying to all concerned in the dispute then under adjudication that, as between those persons and the Nags, the Nags were to be maintained in possession. The petitioners are either servants of Kutubudin, the unsuccessful party in that case, or the purchasers of a share in his estate, and the attempt made to disturb the possession of the Nag family is exactly on the same grounds as set up in that case. That the petitioners were aware of the Magistrate's order is clear, and the only question therefore is whether they can properly be punished for direct disobedience to it. That order not only forbade all disturbance with the possession of the Nag family, but referred the opposite party to the Civil Court for a determination of the claim to possession set up by him. It is in consequence of an assertion of this very same claim that the present proceedings were instituted. The facts found show that these petitioners at the instance of Kutubudin have attempted to disturb the possession of the Nags in disobedience of the Magistrate's order, and they are therefore liable for the consequences as much as Kutubudin. We are accordingly of opinion that on the facts found by the lower Courts the petitioners have been rightly convicted.

It is next objected that the order in question was not a legal order, and that therefore the petitioners were not bound to obey it.

It appears that instead of putting on the record of this trial as an exhibit the order itself, the Magistrate has made part of that record the whole of the previous record. This we remark was a most unusual and unnecessary proceeding, since the only portion of that record which was relevant to this trial was the order itself. Mr. Evans accordingly claimed the right to refer to all these proceedings, and contends that there is *nothing* to show that the Magistrate recorded a proceeding setting out the grounds upon which he considered that a breach of the peace was imminent, such as would authorize his interference between the parties; and he further contends on the authority of certain cases decided in this High Court, that the proceedings are bad for want of jurisdiction, and that consequently the order was without authority and cannot be enforced.

The cases on this point are, we observe, contradictory, and if it really arose we should feel bound to refer the matter for settlement by a Full Bench; but on examination of the record we find no valid ground for this objection. The Magistrate refers to a Police report which clearly sets out the probability of a breach of the peace, and we must regard that report as forming part of, and incorporated with, the Magistrate's proceeding.

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We accordingly see no sufficient grounds for interfering as a Court of Revision.

The rule is discharged.

Rule discharged.

P. O'K.

Before Mr. Justice O'Kinealy and Mr. Justice Agnew.

ANUND MOYI DABIA (PETITIONER) *v.* SHURNOMOYI (OPPOSITE PARTY.)*

1886
 June 28

Criminal Procedure Code, s. 145—Julkur right—Tangible immoveable property—Dispute regarding a julkur.

A dispute concerning a *julkur* right is not a dispute concerning "tangible immoveable property" within the meaning of s. 145 of the Code of Criminal Procedure, and cannot be inquired into by a Magistrate under the provisions of that section.

IN this case the petitioner, Rani Anund Moyi Dabia, and the Maharani Shurnomoyi each claimed to be in possession of the fishery of a *chora* or abandoned bed of the river Dhurla, which is commonly called the *Dasherhat chora*. The Maharani based her claim on a decree which she had obtained against the predecessors of the petitioner in the year 1867, and on the fact that in 1282 B.S. she had leased the fishing to her jotedar Baboo Lukhi Kanto Sirkar, who had all along remained in possession. Rani Anund Moyi Dabia claimed to be in possession of the fishery by her *ijaradar* Chandro Canto Manjhi. The Deputy Magistrate of Kurigram held a proceeding under s. 145 of the Criminal Procedure Code, and having come to the conclusion on the evidence that the Maharani Shurnomoyi was in possession passed the following order on the 10th of March 1886:—

* Criminal Revision No. 220 of 1886, against the order passed by T. J. Mendes, Esq., Deputy Magistrate of Kurigram, dated the 10th of March 1886.