CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Stevens.

1901
Jan. 9, 18.

ANESH MOLLAH AND OTHERS (PETITIONERS) *v.* EJAHARUDDI MOLLAH AND ANOTHER (OPPOSITE PARTY).*

Jurisdiction—Code of Criminal Procedure (Act V of 1898) s. 145—High Court—Non-joinder of necessary parties—Subordinate Criminal Courts—Circumstances under which they have jurisdiction.

The High Court has power to set aside a proceeding under s. 145 of the Code of Criminal Procedure on the non-joinder of parties, whose presence is essentially necessary for the proper and effectual decision of the case. *Laldhari Singh* v. *Sukdeo Narain Singh* (1) followed.

Under s. 145 of the Code of Criminal Procedure a special jurisdiction is vested in the Subordinate Criminal Courts under special circumstances and for a special purpose. When either the special circumstances do not exist or when the order made under s. 145 does not attain the purpose, for which the jurisdiction is created, then the special jurisdiction vested under that section falls to the ground.

The circumstances under which the jurisdiction springs up are circumstances, which give rise to an apprehension of a breach of the peace, and, if there is no apprehension of a breach of the peace, there is no jurisdiction to make the order.

The purpose the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under s. 145, it must be taken to have been without jurisdiction.

IN this case there was a dispute in regard to certain lands between two sets of zemindars called respectively the Kharoria and Shahapur Babus. In September 1885 an order under s. 145 of the Code of Criminal Procedure was made in favour of the Kharoria zemindars. The Shahapur zemindars thereupon brought a civil suit in respect of the lands and obtained a decree. They were then put in symbolical possession thereof and proceeded to give *pottahs* to various persons. One Ejaharuddi, who claimed to have been for a long time in occupation of the lands in dispute, presented a petition to the Deputy Magistrate

* Criminal Revision No. 868 of 1900, made against the order passed by Babu Ramani Mohan Das, Sub-Divisional Magistrate of Madaripur, dated the 24th of August 1900.

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of Madaripur on the 7th April 1900, in which he stated that the Shahapur zemindars were trying to oust him of his possession through certain of the persons, to whom they had given *pottahs*. The petition was referred to the police for enquiry. Upon the police report and the petition the Sub-Divisional Magistrate of Madaripur directed proceedings under s. 145 of the Code of Criminal Procedure to be taken. On the 18th May 1900 a proceeding was drawn up against Ejaharuddi, who was made the first party, and against the various persons, who had obtained *pottahs* from the Shahapur zemindars, who were made the second party. Subsequently on the application of one Ismile Munshi, who claimed to be entitled to the land in dispute jointly with Ejaharuddi, the former proceeding was cancelled on the 18th June 1900 and a fresh proceeding was drawn up with Ismile Munshi as the third party. In their written statement the second party contended that, as the Shahapur zemindars claimed possession of these lands, they, as well as the Kharoria zemindars, were necessary parties to the proceedings.

The Sub-Divisional Magistrate, without making the zemindars parties, made an order on the 24th August 1900, under s. 145 of the Code of Criminal Procedure in favour of the first party.

The second party appealed to the High Court and obtained a Rule on the ground *inter alia* that, as the Shahapur zemindars were necessary parties to the proceedings and had not been joined, the order under s. 145 was bad.

Mr. *Hill* (with him Babu *Jogesh Chunder Roy* and M. *A. K. Fuzlel Huq*) for the petitioners.

Sir Griffith Evans (with him Babu *Atulya Charan Bose*) for the opposite-party.

1901, JAN. 18. The judgment of the Court (AMEER ALI and STEVENS, JJ.) was as follows :—

The facts which gave rise to the application upon which this Rule was granted are shortly these : The land in dispute covers an area of over 200 bighas and was the subject of a proceeding between two sets of zemindars, called respectively the Kharoria and Shahapur Babus. An order was made in favour of the

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Kharoria zemindars under s. 145 of the Code of Criminal Procedure. A civil suit was then brought by the Shahapur zemindars in respect of the lands in question, and they succeeded in obtaining a decree therefor. They obtained symbolical possession under their decree and then proceeded to give *pottahs* to various people, who are now grouped as second party in the proceedings before us. The first party is one Ejaharuddi, and he claims to have been, since a long time, in occupation of the lands in dispute. He presented a petition to the Deputy Magistrate on the 7th April 1900, in which he stated that he was the tenant of the Kharoria zemindars in respect of the lands in dispute, and that he gave evidence in their favour, but since the Shahapur zemindars had obtained possession, he was willing to attorn to them; but that they are trying to oust him of his possession through members of the second party. The petition was referred to the police for enquiry, who made a report to the effect that, in consequence of these disputes, there was an apprehension of a breach of the peace. Upon the aforesaid petition and report, the Sub-Divisional Officer, on the 12th April last, directed proceedings under s. 145. On the 18th May a proceeding was drawn up against Ejaharuddi, who was made the first party and against the various persons, who had obtained *pottahs* from the Shahapur zemindars, who were made the second party. On the 3rd June one Ismile Munshi came in and presented a petition to the effect that he was entitled to the land in dispute jointly with Ejaharuddi. Accordingly he also was made a party, and on the 18th June the former proceeding was cancelled and a fresh proceeding was drawn up with Ismile as the third party.

The first, second and third parties filed their statements in accordance with the directions given to them. The second party stated that, since their zemindars had obtained possession of the lands in dispute and had given them *pottahs*, they were in possession of these lands under separate documents from separate sets of the Shahapur zemindars and that there was no connection between the several plots so held by them separately. They also contended that as the Shahapur zemindars claimed possession of these lands, they, as well as the Kharoria zemindars, were necessary parties to the proceedings. The Magistrate did not

make the zemindars parties to the proceedings, but, on the 24th August, made an order under s. 145 in favour of the first party, Ejaharuddi. The second party thereupon applied to this Court and obtained the Rule now before us.

The three points urged in this Court are: *first*, that the Shahapur zemindars were necessary parties to the proceedings and, they, not having been joined, the order under s. 145 is bad; *secondly*, that, inasmuch as the dispute refers to various plots of land held by different persons grouped under the head of second party under different titles and under different allegations, there ought not to be one proceeding or one investigation, and that therefore the order is bad. The third ground is that the order directing that Ejaharuddi and Ismile Munshi, the first and third parties, do retain possession of these lands jointly in equal moieties is an improper order. The learned Counsel, who appeared on behalf of the first party, in showing cause, contended that none of these points raised any question of jurisdiction, and that, inasmuch as, since the amendment of the law, the power of this Court to revise orders under s. 145 is confined to questions of jurisdiction, we ought not to interfere with the present order. Ordinarily speaking, an objection based upon non-joinder of parties does not involve a question of jurisdiction, but in cases arising under s. 145 the question relating to jurisdiction depends upon the provisions of that section. It appears to us that under section 145 of the Code of Criminal Procedure a special jurisdiction is vested in the subordinate criminal Courts under special circumstances and for a special purpose. When either the special circumstances do not exist or when the order made under s. 145 does not attain the purpose, for which the jurisdiction is created, then the special jurisdiction vested under that section falls to the ground. It is sufficient to point out that the circumstances under which the jurisdiction springs up are circumstances which give rise to an apprehension of a breach of the peace, and, if there is no apprehension of a breach of the peace, of course there is no jurisdiction to make the order. Again it seems to us that the purpose the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under section 145, it must be taken

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to have been without jurisdiction. Now, in the present case there was undoubtedly an apprehension of a breach of the peace, and, so far as the first part of the section is concerned, the Court had jurisdiction to take cognizance of the matter. The second part has reference to the proceedings in Court instituted for the purpose of attaining a definite object, namely, to prevent a breach of the peace. We think the present case falls exactly within the principle laid down in *Laldhari Singh* v. *Sukdeo Narain Singh* (2). It was attempted to distinguish that case from the one before us. In *Laldhari Singh's* case a certain set of tenants were disputing about the possession of a particular piece of land claiming to hold it under one set of landlords, whereas another set of tenants claimed to hold the same land under another set of landlords. A proceeding was first started, in which the tenants were made parties, regarding the possession of the land. It was afterwards altered into one, in which the dispute was stated to be regarding the collection of rent as between the two sets of landlords. In this latter proceeding the tenants were not made parties. It was held there, that in altering the proceeding, the Magistrate had wrongly exercised his jurisdiction. That was one part of the case. It was also held that the Lower Court was wrong in not making the tenants parties to the proceedings, inasmuch as they were persons concerned in the dispute and their presence was necessary for the purpose of preventing a breach of the peace, which was apprehended. Stanley, J., in his judgment points out that "the duty of the Magistrate was to deal with the dispute as it really was, namely, a dispute between one set of zemindars and their tenants on the one side and another set of zemindars and their tenants on the other, and accordingly to maintain in possession according to their respective interest, the zemindars and their tenants, whom he found on satisfactory evidence to have been in actual possession at the date of the order, if the evidence satisfied him that any of the parties to the dispute was in such possession." Then after referring to the cases on the point he went on to add "that the order is calculated to operate to the prejudice of the first-party and their tenants, appears to me to follow from the fact that all disturbance of

(2) (1900) I. L. R., 27 Calc., 892.

possession of the second party is prohibited by this order." The necessity of bringing into Court all the parties concerned in the dispute is pointed out again in p. 915. "But here two rival sets of tenants holding under two different sets of zemindars were contending about the actual possession of a strip of land. There was no question as to the collection of rent at all. The dispute, pure and simple, was, which set of tenants was in actual occupation of the land. The tenants thus were the parties directly concerned in the dispute. If the tenants of the first party were in possession, then the latter were in possession through them (to use the Sub-Inspector's language). If the tenants of the Narga Babu's were in possession, then these zemindars were in possession through them. It will be seen, therefore, that, whereas the tenants were directly concerned in the dispute, the zemindar's concern was of an indirect character. The presence of the tenants was thus essentially necessary for the proper and effectual decision of the case." In the present case it is admitted that the Shahapur zemindars obtained symbolical possession from the Court and were in possession through their tenants, who had given them *kabuliats*. From the very objection pressed before us it seems that they were necessary parties to this proceeding. It was stated by Ejaharuddi that he had long occupied the land, but that the Shahapur zemindars were trying to do away with his possession by means of persons, to whom they had given *pottahs*, in other words, the second party. If that be so and that seems to be the case of the first party, it is quite clear that the dispute is not put an end to by merely making an order against the second party, for the zemindars are in no way bound by that order. They can go upon the land at any moment or they may give *pottahs* to anybody else they like with the object of retaining possession of the land. The tenants, against whom the order has been made may abide by it, but that in no way puts an end to the dispute and in no way prevents the apprehension of a breach of the peace, the purpose for which alone the law contemplates a proceeding of the special character provided for in s. 145. We are of opinion, therefore, that this order is bad for non-joinder of the Shahapur zemindars. We do not think it necessary to

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express any opinion on the other question, upon which this Rule was granted. We think that the present order must be set aside and we set it aside accordingly. This order, however, will not stand in the way of the Magistrate, if he considers that there is still an apprehension of a breach of the peace, to take such steps as he may be advised.

D. S.

ORIGINAL CIVIL.

Before Mr. Justice Harington.

1901
April 11, 12
&
May 1.

BHOONI MONEY DOSSEE v. NATOBAR BISWAS. *

Slander—Defamation—Action for slander—Special Damage—Damage for mental distress alone, not recoverable—Cause of action—Presidency Town—English Law of Slander, rules of—Charter of 1726—Limitation Act (XV of 1877), Sch. II, Art. 25.

In an action for damages against the defendant for having falsely and maliciously used slanderous words imputing unchastity to the plaintiff, no special damage was alleged in the plaint, nor any actual damage proved at the trial :

Held, that, as the words were not *per se* actionable, and as no damage in fact was alleged or proved, the action must be dismissed with costs.

The decision of the majority of the Full Bench in *Girish Chunder Mitter* v. *Jatadhari Sadukhan* (1) approved and followed.

Parvathi v. *Mannar* (2) discussed. *Kashiram Krishna* v. *Bhadu Bapuji* (3), *Jogeshwar Sharma* v. *Dinaram Sharma* (4), and *Dawan Singh* v. *Mahip Singh* (5) distinguished.

Damages are not recoverable for mental distress *alone*, caused to the plaintiff by slanderous words conveying insult : *Wilkinson* v. *Downton* (6), *Lynch* v. *Knight* (7), referred to.

* Original Civil Suit No. 320 of 1898.

(1) (1899) I. L. R. 26 Calc. 653.
(2) (1884) I. L. R. 8 Mad. 175.
(3) (1870) 7 Bom. H. C. A. C. 17.
(4) (1898) 2 C. W. N. 123 (Notes).
(5) (1888) I. L. R. 10 All. 425, 456.
(6) (1897) 2 Q. B. 57.
(7) (1861) 9 H. L. C, 577, 598.