

## CRIMINAL REVISION.

Before Mr. Justice Coxe and Mr. Justice Ryves.

1909  
July 20.

AKALOO CHANDRA DAS

v.

MOHESH LAL.\*

*Tolls—Dispute concerning the right to collect market tolls and not the possession of the market land—Possession under ekrarnama as agent of co-sharer for collection of tolls and division of profits—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898) s. 145.*

Section 145 of the Criminal Procedure Code does not apply to a dispute relating to the rights of co-sharers to collect tolls in proportion to their respective shares in a *hât* and not to the possession of the *hât* itself.

Where one of two co-sharers was entitled under an *ekrarnama* to collect the tolls of the whole market and to divide the profits with the other co-sharer at the end of the year, and the lessee of the latter attempted to collect his lessor's share independently :—

*Held*, that the Magistrate had no jurisdiction to take proceedings under section 145 in such a case.

A Magistrate cannot under the section determine the method by which the possession of the parties is to be exercised or the agency by which the party in possession is to collect the profits of land.

*Nritta Gopal Singh v. Chandî Charan Singh* (1) followed.

*Sri Mohan Thakur v. Narsing Mohan Thakur* (2) distinguished.

*Tarujan Bibee v. Asanuddi Bepari* (3) referred to.

DHANESSUR LAL and Mathoor Mohan Das were the *se-putnidars* of the Gohatta Bolarampur *hât* in the district of Purneah, and held therein ten-annas and six-annas shares respectively. In November 1900, Mathoor executed an *ekrarnama* empowering Dhanessur to collect also his six-annas share of the tolls in *ijmali* and to divide the proportionate profits annually between them. On the death of Mathoor his son, the petitioner Kristo Mohan Das, became his heir, and he leased his undivided share in the *hât* to the petitioner, Akaloo Chandra Das, in *ijara*

\* Criminal Revision No. 548 of 1909, against the order of S. Karam Husain, Deputy Magistrate of Purneah, dated March 24, 1909.

(1) (1906) 10 C. W. N. 1088.

(2) (1899) I. L. R. 27 Calc. 259.

(3) (1900) 4 C. W. N. 426.

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on the 27th January 1909. The opposite party, Mohesh Lal, who had succeeded his father, Dhanessur, continued to collect the 16-annas tolls after the death of the latter. On the 31st January, Akaloo went to the *hât* with a body of men and tried to collect the six-annas tolls by force, whereupon Mohesh Lal complained to the police who, after inquiry, submitted a report the next day recommending proceedings under sections 107 and 144 of the Code against the petitioners. Thereupon the District Magistrate of Purneah issued notices under section 144, and drew up a proceeding under section 145 of the Code, on the 9th ultimo, against Mohesh Lal as first party and Akaloo as second party, to which the petitioner, Kristo Mohan, was subsequently added as a party with his lessee. Mohesh Lal filed a written statement on the 22nd instant admitting that Kristo Mohan was entitled to a six-annas share and was in possession thereof, but he claimed to have the right under the *ekrarnama* to collect the whole of the tolls. The share of Mohesh Lal was admitted by Kristo Mohan in his written statement, but his right to collect the entire toll was disputed, and the genuineness of the *ekrarnama* impugned. The District Magistrate by his order, dated the 24th March, declared Mohesh Lal to be in possession of the *hât*, whereupon the petitioners moved the High Court and obtained the present Rule.

*Babu Dasharathy Sannyal (Babu Hemendra Nath Sen and Babu Ramani Mohan Chatterji with him)*, for the petitioners. The *ekrarnama* was personal to its parties and is not binding upon Kristo Mohan. The dispute is one as to the right to collect the tolls of the *hât* and not as to the possession of it, and section 145 does not apply. He relied mainly on *Nritta Gopal Singh v. Chandî Charan Singh* (1) and *Radha Raman Ghose v. Baliram Ram* (2).

*Mr. Chatterjee (Babu Jotindra Nath Banerjee with him)*, for the opposite party. The deed is binding on the successors of the parties to it. Mohesh Lal has all along collected the

(1) (1906) 10 C. W. N. 1088.

(2) (1904) I. L. R. 32 Calc. 249.

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tolls of the *hât* and is in possession. Section 145 applies to this case: *Sri Mohan Thakur v. Narsing Mohan Thakur* (1).

*Cur. adv. vult.*

COXE AND RYVES JJ. This is a Rule on the District Magistrate of Purneah to show cause why an order under section 145 of the Criminal Procedure Code should not be set aside on the ground that the Magistrate had no jurisdiction to pass any order in respect of the subject-matter of the dispute in which the parties claimed to be jointly interested.

The Magistrate has submitted an explanation, but does not refer therein to the difficulty which has occasioned the Rule.

It appears that the first party, Mohesh Lal, and Kristo Mohan Das of the second party, are entitled to the market in dispute. The former is entitled to ten annas and the latter to six annas. Akaloo Chandra, the other member of the second party, is a lessee from Kristo Mohan Das. The Magistrate finds that Mohesh Lal of the first party obtained an agreement from the father of Kristo Mohan Das authorizing him to make collections of the whole of the tolls, and to divide the shares at the close of each year. Under this agreement he collected the whole of the tolls. Akaloo attempted to collect a six-annas share but was prevented, and has never been able to enforce his rights. The written statement of the first party fully admits that Kristo Mohan Das not only is entitled to a six-annas share of the collections from the market, but is actually in possession thereof. Indeed, if Mohesh Lal is collecting his share on his behalf, and giving it to him, it is difficult to see how Kristo Mohan Das' possession can be denied. There is nothing to show that this agreement is irrevocable, and Mohesh Lal's collection of tolls under it must, we think, be regarded, so far as the six-annas share is concerned, as a collection by him of Kristo Mohan Das' tolls in the capacity of Kristo Mohan Das' agent. This being so, we do not think that the order of the Magistrate can be regarded as within jurisdiction. He

is entitled to decide which of the parties is in possession. Here the possession is undisputed, and the only dispute that exists relates to the machinery by which Kristo Mohan Das exercised his possession. The view that we take appears to us to be supported by the decision in the case of *Nritta Gopal Singh v. Chandi Charan Singh* (1), the circumstances of which case are very similar to those of the case now before us. Doubtless, if Mohesh Lal was in possession in the capacity of a lessee or under some agreement that Kristo Mohan Das could not terminate, the position might be different, and in such a case an order under section 145 of the Criminal Procedure Code might perhaps be permissible.

The learned counsel for the opposite party relies on the case of *Sri Mohan Thakur v. Narsing Mohan Thakur* (2). That case, however, was distinguished in the case which we have already cited, and the effect of the previous decision, on which it was to a great extent based, is somewhat weakened by the decision of the same learned Judges in the case of *Tarujan Bibee v. Asamuddi Bepari* (3).

We think that the findings of the Magistrate are tantamount to a decision that the second party is in possession of the six annas of the disputed market, and, that being so, we think the Magistrate had no jurisdiction to pass orders under section 145 of the Criminal Procedure Code. He cannot decide under that section the method by which the possession is to be exercised, or the agency by which the person in possession is to collect the profits. The Rule is accordingly made absolute. The costs, if paid, will be refunded to the petitioners.

*Rule absolute.*

(1) (1906) 10 C. W. N. 1088.

(2) (1899) I. L. R. 27 Calc. 259.

(3) (1900) 4 C. W. N. 426.