

CRIMINAL REVISION.

Before Mr. Justice Caspersz and Mr. Justice Ryves.

DALMIR PURI

v.

KHODADAD KHAN.*

1909

June 10.

Criminal Procedure Code (Act V of 1898) s. 147—Use of Water, dispute relating to—Erection of Bund by one party—Order by Magistrate for its removal under police supervision—Injunction by Civil Court restraining the opposite party from interfering with the Bund—Subsequent order by Magistrate directing its removal by the police.

Section 147 of the Criminal Procedure Code contemplates orders directed to the parties to the dispute, and does not enable a Magistrate to enforce his orders, passed thereunder, through the agency of the police.

An order passed some time after the termination of the proceedings under s. 147 of the Code, directing the removal of a *bund* by the police, is without jurisdiction.

Pasupati Nath Bose v. Nando Lal Bose (1) and *Lalit Chandra Neogi v. Tarini Persad Gupta* (2) distinguished.

UPON the receipt of a police report, Syed Naziruddin, Deputy Magistrate of Monghyr, instituted a proceeding under section 147 of the Criminal Procedure Code between Khodadad Khan and another, as first party, and Mohunt Dalmir Puri and others, as second party. The dispute related to the use of the water of a *pyne*. The first party claimed the right to use the water of the *pyne* as irrigating their mouzah Gungapore, and denied the right of the opposite party to close it up by a *bund*. The second party alleged that the *pyne* was used for the irrigation of the lands of mouzah Barbua of which they held an 8-anna partitioned share. By his order, dated the 23rd December 1908, the Magistrate held that the residents of Gungapore were entitled to the flow of water from the *pyne*, and that the people of Barbua had no right to

* Criminal Revision No. 407 of 1909, against the order of H. F. Samman, District Magistrate of Monghyr, dated March 29, 1909.

(1) (1900) 5 C. W. N. 67.

(2) (1901) 5 C. W. N. 335.

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obstruct it. He accordingly ordered the *bund* to be removed, forbidding the second party from erecting any obstruction till they had obtained the decision of a competent Court adjudging them to be entitled to do so, and further directed the first party to deposit Rs. 25 for the cost of removing the *bund*, which was to be done under of the supervision of the police.

The petitioners thereupon, on the 9th January 1909, instituted a civil suit in the Court of the Subordinate Judge of Monghyr, against the first party and another, for a declaration of their right to irrigate the partitioned lands of their mouzah by erecting a *bund* across the *pyne*. On the 1st March, on the application of the plaintiffs, the Subordinate Judge, after notice to, and hearing, the defendants, granted an injunction restraining them from removing the *bund* pending the decision of the civil suit. A copy of the order was sent to the Magistrate for his information, but he, on the 19th instant, made an order directing the police to remove the *bund*, and the District Magistrate of Monghyr approved of the same on the 29th instant.

Babu Kulwant Sahai, for the opposite party. The Magistrate has jurisdiction to pass an order for the removal of a *bund*: *Pasupati Nath Bose v. Nando Lal Bose* (1) and *Lalit Chandra Neogi v. Tarini Persad Gupta* (2).

Mr. Asgur (*Babu Ganendra Nath Sarkar* with him), for the petitioners. The cases cited are distinguishable. The question here is whether the Magistrate had jurisdiction to direct the police to remove the *bund* after the institution of the civil suit and the issue of the injunction. Section 147 of the Code does not trench on the jurisdiction of the Civil Courts, and the injunction is binding on the second party: *In re Rahmatullah* (3), *Gopi Mohun Mullick v. Taramoni Chowdhrahi* (4) and *Shurut Chunder Banerjee v. Bama Churn Mookerjee* (5).

(1) (1900) 5 C. W. N. 67.

(3) (1895) I. L. R. 17 All. 485.

(2) (1901) 5 C. W. N. 335.

(4) (1879) I. L. R. 5 Calc. 7.

(5) (1879) 4 C. L. R. 410.

CASPERSZ AND RYVES JJ. This is a Rule calling upon the District Magistrate and on the opposite party to show cause why the order of the Deputy Magistrate, dated the 19th March 1909, directing the police to see that the *bund* is removed, should not be set aside on the ground that the Deputy Magistrate had no jurisdiction to make an order, directing the *bund* to be removed by the police, within the purview of section 147 of the Criminal Procedure Code.

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We have heard the learned vakil showing cause against the Rule and the learned counsel in support of it. It appears that, on the 23rd December 1908, the Deputy Magistrate passed an order in the following terms :—“ I, therefore, order that the *bund*, which is an obstruction, should be removed, and order that the second party (the petitioner) should not erect any obstruction until they obtain the decision of a competent Court adjudging them entitled to do such a thing. The first party (the opposite party in this Rule) should deposit Rs. 25 for the cost of removing the obstruction, which will be done under the supervision of the police.” On the 11th of January 1909, the petitioner obtained a temporary injunction from the officiating Subordinate Judge of Monghyr restraining the defendants (the first party) from demolishing the embankment in question, and, on the 1st March 1909, that injunction was continued until further orders. The Subordinate Judge observed : “ the defendants might move again when danger to their property would be imminent, and the Court might then pass necessary orders after local investigation, if necessary.” A copy of this order was forwarded to the Deputy Magistrate for his information. The Deputy Magistrate, thinking that the injunction could act against the first party only, and not against the Criminal Court, and being of opinion that it was imperatively necessary that the *bund* should be removed before the rains set in, proceeded to direct the police to see the *bund* removed.

There is therefore, unfortunately, a conflict between the Civil and Criminal Courts in this respect. We, however, do not propose to travel beyond the scope of our Rule. We

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confine ourselves to decide whether the order of the Deputy Magistrate, dated the 19th March 1909, directing the police to see that the *bund* is removed, was or was not passed without jurisdiction.

The learned vakil for the opposite party relies on the case of *Pasupati Nath Bose v. Nando Lal Bose* (1), where the learned Judges held that, under section 147 of the Criminal Procedure Code, the Magistrate is competent to direct that the obstruction be removed. This case was followed in *Lalit Chandra Neogi v. Tarini Persad Gupta* (2). These cases, however, deal with directions made by a Magistrate against parties to the proceedings, and they are not authorities for the order passed on the 19th March in the present case, some seven weeks after the original order of the 23rd December 1908 disposing of the case.

We do not find in section 147 of the Criminal Procedure Code any indication that the Legislature intended the Magistrate to carry out an order under the section through the agency of the police. The section clearly contemplates orders directed to the persons who are parties to the dispute. In this view of the matter, we must discharge the order of the Deputy Magistrate, dated the 19th March 1909, and make this Rule absolute.

We may add that if the Magistrate is of opinion that the public peace will be disturbed in connection with this embankment, it will be open to him to bind down one or both of the parties under section 107 of the Criminal Procedure Code.

E. H. M.

Rule absolute.

(1) (1900) 5 C. W. N. 67.

(2) (1901) 5 C. W. N. 335.