CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Coxe.

1907
May 17.

KOLHA KOER
v.
MUNESWAR TEWARI.*

Jurisdiction—Dispute concerning land—Jurisdiction of Magistrate—Order on Written Statements without any Evidence—High Court, jurisdiction of—Criminal Procedure Code (Act V of 1898) s. 145 sub-ss. (1), (4).

Sub-section (i) is not the only provision in s. 145 of the Criminal Procedure Code, which lays down what matters relate to the jurisdiction of the Magistrate. There are other provisions in the section, the contravention of which affects his jurisdiction, and so gives the High Court power to interfere.

Where the Magistrate passed an order under s. 146 of the Code, only upon the written statements of the parties and without taking any evidence:—

Held, that the order was without jurisdiction, and that the High Court had power to set it aside.

Surjya Kanta Acharjee v. *Hem Chunder Chowdhry*(1) followed.

Sukh Lal Sheikh v. *Tara Chand Ta*(2) explained.

On the 30th November 1906, the Subdivisional Officer of Hajipur drew up a proceeding under s. 145 of the Criminal Procedure Code against Muneswar Tewari as first party, and Musammat Kolha Koer and others as second party. The parties filed their written statements and other documents on the 7th December, the date fixed for the hearing of the case. On the 21st December the Magistrate recorded an order that it appeared from the statements of the parties that both were in some kind of possession, and were all of one family. He adjourned the case to enable the parties to come to a compromise. No compromise having been arrived at, he passed the following order, on the 21st January 1907, without examining any witnesses in the case: "There is no compromise. I cannot decide which party is in possession of the land and house and, therefore,

* Criminal Revision No. 134 of 1907, against the order passed by P. H. Waddell, Subdivisional Magistrate of Hajipur, dated Jan. 22, 1907.

(1) (1902) I. L. R. 30 Calc. 508. (2) (1905) I. L. R. 33 Calc. 68.

attach the same under s. 146 of the Criminal Procedure Code till the Civil Court shall decide to whom it belongs."

The second party then obtained the present Rule.

Mr. E. P. Ghose (*Babu Chandra Sekhar Banerjee* with him), for the petitioner. The Magistrate acted in violation of clause (4) of s. 145, which requires him imperatively to receive the evidence produced by the parties, to consider the effect of it, and to take such further evidence as is necessary. Where the Magistrate passes an order without taking any evidence, his proceedings are without jurisdiction, and the High Court has power to interfere: *Surya Kanta Acharjee* v. *Hem Chunder Chowdhry*(1), *Gobind Chandra Chakrabutty* v. *Nibaran Chandra Bhuttacharji*(2), *Ram Krista Patra* v. *Aghore Naskar*(3).

Babu Baldeo Narain Singh, for the opposite party. The High Court cannot interfere with an order under Chapter XII when no question of jurisdiction arises. This was laid down in the Full Bench cases of *Khosh Mahomed Sirkar* v. *Nazir Mahomed*(4), and *Sukh Lal Sheikh* v. *Tara Chand Ta*(5). *Maharaj Tewari* v. *Har Charan Rai*(6) also referred to. The only matters which relate to the jurisdiction of the Magistrate are contained in sub-section (1). The other sub-sections deal with procedure: see the opinion of the referring Judges in the Calcutta cases cited by me. Non-compliance with sub-section (4) is not a matter of jurisdiction, but one of procedure. The cases cited by the other side were all decided before the Calcutta Full Bench cases already referred to.

STEPHEN AND COXE JJ. In this case proceedings were instituted under section 145 of the Criminal Procedure Code, and after the parties had put in their written statements, the Magistrate, on the 21st December, made the order: "From the statements of the two parties I am inclined to think that both are in some kind of possession. They are all of one family." He

(1) (1902) I. L. R. 30 Calc. 508.
(2) (1904) 8 C. W. N. 642.
(3) (1902) 6 C. W. N 925.
(4) (1905) I. L. R. 33 Calc 352.
(5) (1905) I. L. R. 33 Calc. 68.
(6) (1903) I. L. R. 26 All. 144.

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then gives them time to compromise the matter. Subsequently on the 21st January he notes: "There is no compromise. I cannot decide which party is in possession of the land and house, and, therefore, attach the same under section 146 of the Criminal Procedure Code."

Against this order the second party has obtained this Rule to show cause why it should not be set aside. The ground suggested for setting it aside is that it appears that on the day that the order was made the Magistrate had before him nothing except the written statements of the parties, and possibly some documents, though none have been entered as having passed through his hands. There were before him witnesses to be examined on behalf of the second party whom he did not hear. The question is, is this a case in which we ought to interfere? In various rulings, of which we only refer to the ruling in *Surya Kanta Acharjee* v. *Hem Chunder Chowdhry*(1), it appears that we have power to interfere in cases where the Magistrate has not heard any evidence, in contravention of the provisions contained in section 145 (*4*). But it has been argued before us that by force of the Full Bench ruling, *Sukh Lal Sheikh* v. *Tara Chand Ta*(2), we can only interfere in cases of contravention of the provisions of section (1), since that sub-section, and that sub-section alone, lays down what is necessary to give jurisdiction to the Magistrate; and the other sub-sections of section 145 only prescribe the procedure to be followed by him after the jurisdiction is vested in him. We do not think that this is so; and from a passage in the judgment of Mr. Justice Ghose at the original hearing, we think, it is plain that there are other provisions than those contained in sub-section (*1*) the contravention of which affects the jurisdiction of the Magistrate, and so gives us power to interfere.

This leads us to the question whether we ought to interfere in this case, and we think we should do so, because the petitioner has been prejudiced by the action of the Magistrate which is complained of. He had evidence which the party who produced it wished to be heard, but none of it was heard. We cannot go into the question of what that evidence was, and what would

(1) (1902) I. L. R. 30 Calc. 508. (2) (1905) I. L. R. 33 Calc. 68.

have been it effect if it, or any of it, had been heard. It appears to us in this case that the petitioner has been prejudiced. We think, therefore, that we ought to exercise the powers which, as we have said, we possess. 1907 KOLHA KOER v. MUNESWAR TEWARI.

The Rule, therefore, is made absolute, and the order is set aside.

Rule absolute.

E. H. M.