

CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Holmwood.

AJODHYA PRASAD SINGH

v.

EMPEROR.*

1908

June 29,

Security to keep the peace—Joint inquiry against several persons—Necessity of specific findings against each—Criminal Procedure Code (Act V of 1898) ss. 107, 118.

Where a joint inquiry has been held against several persons, who were called upon to furnish security to keep the peace under s. 107 of the Criminal Procedure Code, there must be a specific finding against each person of acts rendering him individually liable under the section before an order can be passed binding him down.

UPON the receipt of a report from a police officer that there was an apprehension of a breach of the peace between the petitioners on the one hand and one Birja Singh on the other, the Joint Magistrate of Monghyr drew up a proceeding ultimately under section 107 of the Criminal Procedure Code against the petitioners, and the case was then transferred to the file of Babu S. C. Mitra, a Deputy Magistrate, who after taking evidence passed an order against them, on the 31st March last, binding them down to keep the peace, each for a period of one year.

The petitioners then moved the District Magistrate of Monghyr under s. 125 of the Criminal Procedure Code, but he by his order, dated the 22nd April, declined to interfere.

The trying Magistrate dealt with the case throughout in his judgment, as if it was a section 145 proceeding, and treated the accused jointly as the "second party" and the opponents as the "first party". He referred to the police report, on which the proceeding was instituted, and described the disputed land and the claims of the parties. He then went into the question of possession, and decided it in favour of the first party. He found

* Criminal Revision No. 608 of 1908, against the order of H. F. Samman, District Magistrate of Monghyr, dated the 22nd April 1908.

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that the accused went to the disputed land on the day of occurrence to take forcible possession, that there was an apprehension of a breach of the peace by them, and that it was, therefore, necessary to bind them down.

Babu Jogesh Chandra Roy (Babu Monmotho Nath Mukerjee with him) for the petitioners. The order is bad as it does not contain any findings against each accused showing that he was likely to cause a breach of the peace.

Babu Atulya Charan Bose for the opposite party. The Magistrate finds that all the members of the second party were likely to break the peace by attempting to take possession of the land by force. This finding is sufficient though the names were not mentioned.

STEPHEN AND HOLMWOOD JJ. In this case seventeen persons have been bound down under section 107 of the Criminal Procedure Code, and a Rule has been granted to show cause, why the order binding them down should not be set aside on the ground that there is no finding against the persons bound down sufficient to warrant the order.

The facts of the case are that certain proceedings under section 145 were contemplated and then not undertaken, but instead of that the proposed second party to these proceedings were proceeded against under section 107 of the Criminal Procedure Code. They have throughout been treated as the second party, and no distinction is made between any of them, and there is no finding against any of them individually. For this reason the order before us is bad and must be set aside.

It will remain open to the Magistrate to take such proceedings as he sees fit under section 107; only in order to bind down any persons under that section he must come to definite findings that the persons bound down are themselves separately guilty of conduct making them liable to be so bound down.

The Rule is made absolute.

Rule absolute.