

## CRIMINAL REVISION.

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*Before Mr. Justice Rampini and Mr. Justice Sharfuddin.*

AHMED CHOWDHRY

v.

PARBATI CHARAN ROY.\*

*Dispute relating to land—Jurisdiction of Magistrate—Irregularities in procedure—Omission of personal and local notices—Filing of written statements—Ex-parte order—No opportunity given to a party of adducing evidence.*

Where the Magistrate drew up a proceeding under s. 145 of the Criminal Procedure Code in the presence of the representatives of the parties and fixed a day for the hearing of the case, but there was no personal service of notices on the parties nor local publication thereof and neither party filed written statements, and the Magistrate, after taking the evidence of one witness on behalf of the second party, declared them to be entitled to possession :—

*Held*, that the proceedings were extremely irregular and had prejudiced the first party, and that the irregularities were so great as to amount to a want of jurisdiction, such as would justify the interference of the High Court.

### CRIMINAL RULE.

Upon the receipt of a police report of Samserganj thana, dated the 11th December 1907, showing that a breach of the peace was likely, the Sub-divisional Officer of Jangipur sent for the parties mentioned therein.

On the 15th instant Johad Ahmed Chowdhry, the brother of the petitioner, and Ganga Charan Saha, agent of the second party, appeared before him with a view to an amicable settlement of the dispute, but as the attempt proved abortive, the Magistrate drew up a proceeding under s. 145 of the Code in the presence of these persons calling upon the petitioner, as the first party, and Parbati Charan Roy and others as the second party, to appear on the 19th instant and put in written statements of their respective claims as to the fact of actual possession of the disputed land. It appeared that no notice was served on the parties nor was there any local publication of the same.

\* Criminal Revision No. 137 of 1908 against the order of A. Islam, Sub-Divisional Magistrate of Jangipur, dated the 19th of December, 1907.

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On the day of hearing no written statement had been filed by the second party before the final order, and there was no appearance on behalf of the petitioner.

The Magistrate, after taking the evidence of one witness for the second party, passed an *ex-parte* order in their favour.

On the 21st instant the petitioner put in an application before the Magistrate to set aside the order under s. 145 of the Code and for a re-hearing of the case.

He, after hearing both parties, cancelled the order of the 19th December, and directed them to file fresh written statements on the 10th January 1908.

*Babu Dasarathi Sanyal* for the petitioner.

*Mr. P. L. Roy* (with him *Babu Anilen Pranath Roy Chowdhry*) for the opposite party.

RAMPINI AND SHARFUDDIN, JJ. This is a Rule to show cause, why the order complained of should not be set aside. The order complained of is one under s. 145 of the Criminal Procedure Code directing that the second party shall remain in possession of the disputed land, until evicted therefrom in due course of law. It appears that there was a dispute with regard to two plots of land extending over an area of 1,200 *bighas*. The police thought that a breach of the peace was likely to occur in connection with these lands, and, as far as we can see, it seems to us that the proceedings of the Magistrate were very irregular. In the first place, he did not, after drawing up the proceeding under s. 145, issue notices to the parties. He apparently called the parties before him, and he says that on the 15th December last Johad Ahmed Chowdhry, brother of Sajjad Ahmed Chowdhry, the first party, and Ganga Charan Saha, agent of Parbati Charan Roy, met him with a view to settle the dispute amicably, but no agreement could be arrived at, and so, at the request of Johad Ahmed, a proceeding under s. 145 of the Criminal Procedure Code was drawn up, and the 19th December was fixed in the presence of both the two persons, Johad Ahmed Chowdhry and Ganga Charan Saha, for enquiry in the case.

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As far as we can see, no notices, as required by s. 145 of the Criminal Procedure Code, were served on either of the parties.

We see it is recorded in the order sheet that notice was taken to the amukhtear of the first party, Babu Paresh Nath Das, on the 19th December, but he refused to receive it. Then two mukhtears, Babus Kali Kanto Sircar and Lal Mahomed Haji, appeared in Court on behalf of the first party on that date. They did not file any mukhtearnama, so they were not listened to. The Magistrate then proceeded to take the evidence of one witness of the name of Ganga Charan Guha on behalf of the second party, and decided that there was a likelihood of a breach of the peace, and that the second party was in possession of the disputed land. When he passed his order neither party had filed written statements. A written statement on behalf of the second party was filed after the *ex-parte* order under s. 145 of the Criminal Procedure Code had been passed. It appears to us that the Magistrate's proceedings in this case are very irregular, and they must have prejudiced the first party. This irregularity was so great as to amount to a want of jurisdiction and to justify our interference. No notice was ever served on the first party in accordance with the provisions of sub-section (3) of s. 145 of the Criminal Procedure Code. No notice was fixed on a conspicuous place in the locality, though that may not be essential to the legality of the proceedings. No written statement was received from either party at the time when the order was passed, and there had been no appearance on behalf of the first party, and no opportunity given to cite witnesses or to put in any documentary evidence.

In these circumstances, we do not think that the Magistrate was justified in passing the order, which he did. We accordingly set it aside, as it was passed without jurisdiction, and make the Rule absolute.

*Rule absolute.*