

CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

1908
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 Jan. 29.

PARBATI CHARAN ROY  
 v.  
 SAJJAD AHMAD CHOWDHURY.\*

*Jurisdiction—Review—Criminal Procedure Code (Act V of 1898) ss. 145, 369.*

A Magistrate has no jurisdiction to review a final order passed by himself under s. 145 of the Criminal Procedure Code.

THE petitioners were the second party in a proceeding under s. 145 of the Criminal Procedure Code. On the 19th December, 1907 the case was called on and heard *ex-parte* before the Sub-divisional Officer of Jangipur. The Magistrate took the evidence of one witness and passed an order under s. 145 of the Code in favour of the petitioners. Subsequently, on the 21st December, the first party applied for a review which was allowed on the 3rd January 1908, and the Magistrate directed both parties to put in fresh written statements on the 10th January. Against this order the petitioners obtained the present Rule.

*Mr. P. L. Roy (Babu Anilendra Nath Roy Chowdhry with him)*, for the petitioners. The order of the Magistrate reviewing his previous decision is without jurisdiction. Section 369 of the Criminal Procedure Code prevents a Court, other than the High Court, when it has signed its judgment, from altering or reviewing the same.

*Babu Dasharathi Sanyal (Babu Abani Bhushan Mookerjee with him)*, for the opposite-party. An order under s. 145 of the Criminal Procedure Code is not a "judgment" within the meaning of s. 369. A Court has inherent power to review its own orders.

\* Criminal Revision No. 80 of 1908 against the order of A. Islam, Sub-divisional Magistrate of Jangipur, dated Dec. 19, 1907.

RAMPINI AND SHARFUDDIN, JJ. This is a Rule calling upon the District Magistrate of Murshidabad and also upon the opposite party to show cause why the order of the Deputy Magistrate of Jangipur, dated the 3rd January last, should not be set aside.

The order purports to be one under section 145 of the Criminal Procedure Code. The facts are these. On the 19th December last, the same Magistrate passed an order under section 145 of the Criminal Procedure Code directing that the second party should remain in possession of the disputed land until evicted in due course of law. But he afterwards discovered that this order had been passed *ex-parte*, and accordingly proceeded, as he says, to review it. He considered himself entitled to do so, because, he says, "It appears that an order under section 145 of the Criminal Procedure Code is not a 'judgment' within the meaning of section 369 of the Criminal Procedure Code, and so I hold that it can be reviewed." He then goes on to say:—"I, therefore, review the case and direct both parties to put in fresh written statements on the 10th January 1908. In the meantime the Receiver will retain possession. This order is to be communicated to the Receiver and the police by special messenger to-day."

Now, it has been contended before us that this order is entirely without jurisdiction because the Deputy Magistrate, having on the 19th December 1907 previously declared the second party in possession, had no right to review his order. We consider that this contention must prevail. There is no authority for holding that a Magistrate can review a final order passed by himself under section 145 of the Criminal Procedure Code.

The pleader for the opposite party has not been able to show us any direct authority for such a proposition as this. He calls attention to certain cases decided by this Court in its civil revisional jurisdiction, and contends that every Court has inherent power to review its own orders. It is unnecessary for us to consider this question. All we need say is that, so far as we are able to see, a Criminal Court has no right or authority to review final orders passed by it under section 145 of the Criminal Procedure Code.

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We, therefore, consider that the order of the 3rd January last is entirely without jurisdiction, and we set it aside, making this Rule absolute.

*Rule absolute.*

E. H. M.