

## CRIMINAL REVISION.

*Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.*

RAM SARAN PATHAK

v.

RAGHU NANDAN GIR.\*

1910

Dec. 16.

*Offerings to Deity—Dispute concerning the possession of a temple and its offerings—Offerings not “profits” arising out of a temple—Jurisdiction of Magistrate—Apportionment of the offerings—Criminal Procedure Code (Act V of 1898) s. 145.*

Section 145 of the Criminal Procedure Code includes within its scope a dispute concerning the actual possession of a temple and the land on which it stands, but not one relating to the right to, and apportionment of, the offerings given by the worshippers.

Such offerings are not “profits” arising out of the temple within the meaning of s. 145 (2).

An order made under s. 145 declaring a party entitled to the actual possession of a temple and its offerings is, therefore, *intra vires* as to the temple, but not as to the offerings.

*Guiram Ghosal v. Lal Behari Das* (1) referred to.

THE facts of the case appear to be as follows: There is in the city of Gaya a temple called the Pita Maheswar in which the principal deity is an idol of the god Shiva open to the public for worship. The temple was originally the private property of Sita Dai, who made a gift of it to Chaman Lal, Gayawalla, in 1852. After the latter's death in 1896, his grandson, Kashi Lal, came into possession of his estate, and executed several mortgages of the temple and its offerings to various persons down to 1907. After a previous mortgage, Kashi Lal conveyed his rights in the temple with the offerings to Raghu Nandan Gir by a *kobala*, dated the 15th April 1909. Disputes then arose between the petitioner and Raghu Nandan regarding the possession of the temple and the management of its offerings, resulting in an order under s. 145

\* Criminal Revision, No. 1419 of 1910, against the order of H. B. Sahay, Deputy Magistrate of Gaya, dated Sept. 23, 1910.

(1) (1910) I. L. R. 37 Cal. 578.

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of the Criminal Procedure Code, passed on the 1st December 1909, which was set aside by the High Court on the 29th April 1910. On the 23rd May 1910, the petitioner made an application to the Magistrate in charge to bind down Raghu Nandan under s. 107, or to take proceedings under s. 145 of the Code. The latter course was adopted, and a proceeding was instituted, on the 30th May, between the petitioner, as the first, and Raghu Nandan, as the second, party. The petitioner claimed to be in possession of the temple as the sole *pujari* by hereditary descent, and to be entitled to one-fourth of the offerings for his personal use, the remainder being according to him, entrusted to Chaman Lal, and since his death to Kashi Lal, for the purposes of the *rag* and *bhog* of the idol. At a later stage of the case the landlord of the lands in the *mahalla*, in which the temple was situated, was added as a party. The Magistrate found by his order, dated the 23rd September 1910, that the second party, as the vendee of Kashi Lal, was the proprietor and in actual possession of the temple and its offerings since his purchase, and was entitled to the same until eviction in due course of law; that the first party, as *pujari*, was a servant of the proprietor of the temple, and had no *locus standi* in the proceeding, and that the third party had no claim whatever in the matter.

The first party then moved the High Court and obtained the present Rule.

*Mr. K. N. Chaudhuri, Babu Hari Bhusan Mookerjee and Babu Prakash Chandra Saṅkar*, for the petitioners.

*Babu Manmatha Nath Mookerjee*, for the opposite party.

HOLMWOOD AND SHARFUDDIN JJ. This was a Rule calling upon the District Magistrate of Gaya to shew cause why the proceedings against the petitioner under section 145 of the Criminal Procedure Code should not be quashed on the ground that they are without jurisdiction and in direct contravention of the ruling in *Guiram Ghosal v. Lal Behari Das* (1).

(1) (1910) I. L. R. 37 Calc. 578.

It has been pointed out to us by the learned vakil who appears to shew cause, and very properly pointed out, that, so far as the declaration of possession of the temple and the land on which it stands in favour of Raghu Nandan Gir goes, that declaration has been made with full jurisdiction, and is not in contravention of any ruling of this Court.

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The only question which arises in this case is whether the declaration that Raghu Nandan Gir is in possession of the offerings is an order made with jurisdiction or not. It is contended that the offerings made in a temple are of the same nature as the rents and profits arising out of lands. Now section 145, clause (2), says: "For the purpose of this section the expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property." It appears clear to us that the offerings given by worshippers for the worship of any deity are not profits arising out of a building. If the deity be in a cave or under a tree, as it originally was in years gone by, the offerings would accrue in exactly the same manner. The offerings arise out of the deity, irrespective of the building or the land upon which he may happen to dwell. To hold otherwise would be to allow the Criminal Courts to interfere with the customary laws of this country. There are certain rules differing in various sects and in various districts as to the apportionment of the offerings between the ground landlord, the actual holder of the temple, the middleman, and the *pujari*, and the sums which are devoted to the up-keep of the temple. Now it is quite impossible for the Criminal Courts to go into these matters, and it is quite impossible to say that the whole of these offerings belongs to the ground landlord, middleman, *pujari* or to the endowment. The matter, which depends entirely upon custom and sometimes upon an ancient grant or other documents, can only be adjudicated upon by a competent Civil Court. And that was the view which appears to have guided the Judges who decided the case of *Guiram Ghosal v. Lal Behari Das* (1). They say that "considering also the scope of section 145 of the Criminal Procedure Code

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we think that the present dispute (which was the right to perform the duties of a *pujari*) is certainly not one which was intended that section 147 should cover."

The argument that this case was under section 147 of the Criminal Procedure Code, and, therefore, does not affect the present case which is one under section 145 of the Criminal Procedure Code, does not help the petitioner, because a case under section 147 of the Criminal Procedure Code is to be decided by the same procedure and on the same principles as a case under section 145 of the Criminal Procedure Code. And as the Judges say, "it may be that it is impossible to perform the duties of a *pujari* without entering upon the land upon which the temple is built."

But when it comes to the question of the offerings being disputed and not the house or the land, it is clear that the dispute is about moveable property; and it is now settled law that section 145 of the Criminal Procedure Code has no concern with moveable property.

We, therefore, consider that the order, so far as it affects the offerings of the temple, was made without jurisdiction, and that portion of the lower Court must be discharged, the Rule being made absolute to that extent, and to that extent only.

E. H. M.

*Rule absolute in part.*