

which he had got into in consequence of the riot, and the circumstance that the document was not supported by the production of perjured evidence of its genuineness may be taken into account in mitigation of punishment. On these grounds, we think the sentence may, with propriety, be reduced, and we reduce it from five years' rigorous imprisonment to three years' rigorous imprisonment. Subject to this modification in the sentence, the appeal will be dismissed.

E. H. M.

*Appeal dismissed.*

1911  
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## CRIMINAL REVISION.

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

BAISNAB CHARAN MAJHI

v.

GATINATH MUNSHI.\*

1912  
 Jan. 18.

*Jalkar—Dispute concerning jalkar—Jurisdiction of Magistrate to institute proceedings under s. 145 of the Code after an order binding down one of the parties to keep the peace—Order attaching the subject of dispute on being unable to determine the question of possession—Criminal Procedure Code (Act V of 1898), ss. 107, 145, 146.*

The Magistrate has jurisdiction to take proceedings under s. 145 of the Criminal Procedure Code, after an order under s. 107 of the Code binding down one of the parties to keep the peace, when the circumstances so require.

Where there was a reasonable apprehension that several persons, who were interested in the subject of dispute and had absconded at the time of the s. 107 proceeding, might cause a breach of the peace with the first party, who were fishermen, or that the latter might seek to enforce their rights against the second party who had been bound down, in which

\* Criminal Revision No. 826 of 1911 against the order of A. L. Gupta, Deputy Magistrate of Magura, dated May 4, 1911.

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case the order binding them down would have the effect of ousting them from any possession they might have:—

*Held*, that the Magistrate acted properly in instituting proceedings under s. 145 of the Code, in order to determine which party was in actual possession of the disputed properties, and was justified in attaching the same, under s. 146, if he found himself unable to determine the question of possession.

THE facts of the case were shortly as follows. Numbers 1 to 16 of the first party and Nos. 1 to 5 of the second party were  $\frac{2}{3}$  anna and  $\frac{1}{3}$  anna co-sharers, respectively, in a certain *bheel*, *doba* and *khal* in Sripur, in the district of Jessore. The petitioners, who were fishermen, and some 18 others were tenants of the first party, and Nos. 6 to 11 of the second party were tenants of the latter. Each party claimed exclusive possession of the disputed waters. It appeared that there had been considerable litigation, civil and criminal, between them in respect of these properties. On the 9th December 1910, the second party were bound down, in a proceeding under s. 107 of the Criminal Procedure Code, to keep the peace for one year, upon the application of the petitioners. Certain other persons, who were interested in the subject-matters of the dispute, were, however, absconding at the time of these proceedings.

Upon the receipt of a police report, dated the 17th December 1910, the Sub-divisional Officer of Magura instituted proceedings under s. 145 of the Code between the parties on the 23rd February 1911. He found that there was a likelihood of a breach of the peace between them, but being unable to determine on the evidence, oral and documentary, which party was in actual possession of the subject of dispute, he attached the same under s. 146 of the Code by his order dated the 4th May 1911. The petitioners, thereupon, moved the High Court and obtained the present Rule.

*Babu Narendra Kumar Bose*, for the petitioners.

*Babu Manmatha Nath Mukherjee* and *Babu Kumar Sankar Roy*, for the opposite party.

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HOLMWOOD AND SHARFUDDIN JJ. This was a Rule calling upon the District Magistrate and the opposite party to show cause why the order attaching a certain *jalkar* should not be set aside, on the ground that the Magistrate had no jurisdiction to proceed, after all the members of the second party had been bound down under section 107 of the Criminal Procedure Code, on the 9th December 1910, in a prior proceeding.

The proceedings under section 145 were taken on the 23rd February 1911, and the order complained of was passed on the 4th May 1911, and the Magistrate finding it impossible to determine who was in possession of the *jalkar* attached the property under section 146. Now, it would be impossible for us to say that in no case can the fact that one party had been bound down to keep the peace under section 107 leave the Magistrate any jurisdiction to act under section 145 when the circumstances so require, and we cannot see our way to making this Rule absolute without laying down such a general proposition. Certainly on the facts of this case it was quite open to the Magistrate to hold that there was a probability of a breach of the peace in respect of the possession of this *jalkar*, even although the members of the second party had been bound down. There were many persons who are said to be interested in the *jalkar* who absconded at the time of the 107 proceeding. The second party say that they have a reasonable apprehension that these persons may, by claiming rights in this *jalkar*, cause a breach of the peace with the first party, who are admittedly fishermen; or the first party, being fishermen, may very naturally

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seek to enforce their rights against the second party who have been bound down, in which case the order binding down the second party will have the effect of ousting them from any possession which they may have.

It would seem that in this state of facts the right course for the Magistrate to take would be the course he has taken, namely, to try and discover who is in actual possession of this *jalkar*. He finds himself unable to do so, and he, therefore, properly exercises his jurisdiction under section 146. The fact that the order under section 107 of the Criminal Procedure Code expired in December 1911 does not, of course, in any way affect the legal aspect of the case, but it certainly renders us less disposed in the exercise of our discretion to interfere with any measure that the Magistrate has thought it necessary to take for the preservation of the peace in his district. The Rule is discharged.

E. H. M.

*Rule discharged.*