
(1929) 01 CAL CK 0033
In the Calcutta High Court

Abdur Rahman Bhuia and Others

APPELLANT

Vs

Dinesh Haldar and Others

RESPONDENT

Date of Decision : 24-01-1929

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145(5)

Citation : AIR 1929 Cal 328 : 122 Ind. Cas. 296

Hon'ble Judges : Zahhadur Rahim Zahid Suhrawardy, J;Graham, J

Bench : Division Bench

Judgement

Suhrawardy, J.—In this case a rule has been issued on two grounds:

(1) that Clause 5 Section 145, Criminal P.C., has no application at that stage of the proceeding when both parties had filed their written statements and the learned Magistrate was enquiring into the question of possession ; (2) that the order complained of was illegal and without jurisdiction having been made behind the back of the petitioners and without giving them any opportunity of being heard and adducing their evidence.

2. The Magistrate after starting proceedings u/s 145, dropped them subsequently as it appeared to him from police report that likelihood of the breach of the peace no longer existed.

3. As regards the first ground it is argued that Cl (5) to Section 145, applies only to the stage of the proceeding before written statements are filed by parties and that, after they have been put in the Magistrate has no jurisdiction to stay his hand but that he is bound in law to decide the case on the question of possession. This ground is apparently suggested by the decision of this Court in Manindra Chandra Nandi v. Baroda Kanto Chowdhury [1903] 30 Cal. 112 where after a statement of the facts in the case it was casually remarked that when the Magistrate passed his final order dropping the proceedings no written statement had been filed by either party. That fact, however, did not influence the decision in that case. One would have thought that after the point raised in the case was

settled by Manindra Nandi's case [1903] 30 Cal. 112 there was hardly anything left to be argued. But the learned Counsel for the petitioner says that the wording of Sub-section (5) lends support to the idea that a party is entitled to show that no dispute likely to cause breach of the peace exists only before he had filed his written statement. It is difficult to read that meaning into the sub-section which comes as a separate clause after all the other clauses dealing with the procedure to be followed by a Magistrate after starting proceedings are inserted. By this clause a right is given to any party interested in the dispute to show that a likelihood of the breach of the peace does not exist at any particular time and that if it is so, the Magistrate should cancel the order issued by him under Sub-section (1).

4. The argument which has been placed before us was raised in this shape in Manindra Nandy's case [1903] 30 Cal. 112. There one of the grounds taken was that the Magistrate had no jurisdiction to strike out the proceeding after having once instituted it and that it was incumbent upon him to use the statements if any put in by the parties, to hear parties, to receive evidence produced by them, to consider the effect of such evidence and then to decide whether if any one of the parties at the date of the institution of the proceedings was in possession of the subject-matter of the dispute. This ground was overruled. The same view has been taken in Madras on the line of the decision of this Court in Manindra Chandra Nandy's case [1903] 30 Cal. 112 in Donepudi Narasayya and Another Vs. Chiguluri Venkiah and Others, . Manindra Nandy's case [1903] 30 Cal. 112 was also followed in the case of G. Suryanarayana Vs. Sree Raja Ankineed Prasad Bahadur and Others, which lays down an important proposition namely, that when a Magistrate strikes off a proceeding u/s 145, on the ground that a likelihood of breach of the peace did not exist no party to the proceeding can challenge the propriety of such an order. On this ground also the petitioner is not entitled to question the order which has been passed by the Magistrate in this case. As was observed by Hill, J., in the Full Bench case of Krishna Kamini v. Abdul Jabbar [1908] 30 Cal. 155 at page 195 the object of the enactment of Section 145 is to prevent breach of the peace. The Magistrate is not primarily concerned with civil rights of the parties but he is advised to maintain them only for the purpose of averting a breach of the peace. The learned Judge said:

The maintenance of the public peace was the object before the mind of the legislature and where that supreme object is in view there can be no question but that the convenience and even the rights of individuals must at times be sacrificed for its attainment.

5. It is also suggested that in the present case though the opposite party brought the matter to the notice of the Magistrate that there was on a certain date no likelihood of the breach of the peace, the Magistrate did not rely upon the evidence of that party but upon the report and evidence of the Sub-Inspector of Police. This ground was also suggested in Manindra Ghandra Nandy's case [1903] 30 Cal. 112 where it was observed:

We are unable to understand why there should be any such limitation of the power of the Magistrate to stay his hand if he has become satisfied, whatever his source of information may have been, that the state of things does not exist which alone would give him jurisdiction to proceed with the enquiry.

6. Referring to the wording of Clause (5) it is clear that the Magistrate shall cancel the order initiating the proceeding if he is satisfied at any stage of the case that no such dispute exists. This the Magistrate is entitled to do at any stage of the case though these words are not expressly used in the section but the sense is conveyed by the use of the word " exist" in it. In my opinion this ground must fail. As regards thesecond ground, the answer has been partially given in considering the first ground. What happened was that the Magistrate examined the Police Inspector and on examining him he found that there was no likelihood of the breach of the peace at that time. He thereupon passed an order in the presence of both parties dropping the proceeding. As has been observed in the cases referred to above the petitioner had no absolute right to challenge order by means of evidence relating to the breach of the peace. It has been held in G. Suryanarayana Vs. Sree Raja Ankineed Prasad Bahadur and Others, that it is not obligatory for a Magistrate to take evidence before dropping the proceeding u/s 145, Criminal P.C. It is pertinent to observe that when the Magistrate is able to act upon the Police Report or other information in starting proceeding u/s 145 there is no reason why he should not be competent to stay further proceedings on similar information without being obliged to record such evidence as the parties may adduce. This ground also fails. The rule is discharged.

Graham, J.

7. I agree that the Rule should be discharged. It seems to me that the application of the petitioner is based upon a misconception of the nature of a proceeding u/s 145, Criminal P.C., and of the position and status of the parties to such a proceeding. There is nothing in Sub-section5, Section 145, Criminal P.C, which has the effect of limiting or restricting its operation to the earlier stages of the proceeding. The Sub-section appears to empower the Magistrate at any stage to cancel the proceeding if he is satisfied that no likelihood of a breach of the peace exists. I am further of opinion that no private party, whether he be a party before the Court or not has any locus standi to contest the propriety of the Magistrate's order.