

(1920) 07 CAL CK 0065
In the Calcutta High Court

Ali Mohammad Mondal and Others

APPELLANT

Vs

Fakiruddi Munshi and Others

RESPONDENT

Date of Decision : 02-07-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106
Criminal Procedure Code, 1898 (CrPC) — Section 144, 145

Citation : 59 Ind. Cas. 643

Hon'ble Judges : N.R. Chatterjea, J;Cuming, J

Bench : Division Bench

Judgement

1. This is a Rule calling upon the District Magistrate of Maldah, and the opposite party (who are the first party in a proceeding u/s 145 of the Criminal Procedure Code), to show cause why the order of the District Magistrate of Mildah, date the 30th April, 1920, should not be set aside on the 2nd and 3rd grounds mentioned in the petition, or why such other order should not be made as to this Court may seem proper,
2. The petitioners are tenant holding lands as occupancy raiyats under the Mathurapur Zemindari concern in the District of Maldah and were the second party, while the opposite party, who are the manager and other officers of the concern and the lessees under them, were the first party to the proceedings u/s 145.
3. The dispute between the Mathurapur Zemindari Concern and the tenants relates to the right to grow and collect lac on plum trees standing on lands comprised in the holdings of tenants.
4. The proceedings u/s 145 were started upon a Police report dated the 29th April 1920 to the effect that, the concern was trying to collect lac from the trees standing on the lands of the tenants by their adhidars (lessees); that the tenants on their part were equally anxious to oppose them in their so doing; that on the 26th April Mr. Stevenson, the Manager of the Concern, had laid information before the Police alleging that about 500 men had collected with 24 guns to

attack his men and adhidars and loot his Tajpur lac-godown; that on enquiry it transpired, that there was every possibility of a serious breach of the peace at any moment between the Concern and its tenants in connection with the collection of lac grown on trees on the lands of the tenants in a number of mauzahs (naming them); that a serious breach of the, peace, attended with loss of life, was imminent, and suggested that injunction might be issued u/s 144, Criminal Procedure Code, upon the members of both the parties mentioned in the report directing them to abstain from collecting lac grown on trees on the lands of tenants in order to avoid immediate riot.

5. Thereupon, the District Magistrate made the following order on the 30th April 1920: "Draw up proceeding u/s 145, Criminal Procedure Code, and attach the lac trees standing in the holdings of the tenants mentioned in the proceeding pending further orders. The Police will make arrangements for collecting the lac when it is ready and for bringing it into head quarters and stacking it here,"

6. It appears that on the 4th May and sub-sequent dates, the; Police from different Police stations submitted four reports praying for proceedings u/s 145, Criminal Procedure Code and the District Magistrate on the 8th May, 10th May and 18th May 1920 drew up four different proceedings making in all about 700 tenants second parties in five different proceedings and in each case directed the lac trees to be attached. The proceedings ran as follows:

7."I am satisfied from the Police report that a breach of the peace is imminent, I do hereby direct both parties to appear before me on the 29th May 1920, and to put in written statements of their respective claims as respects the fact of actual possession of the disputed lac on the said trees. As the case is one of emergency, the disputed trees with lac thereon are attached till the decision of the case." The 31st May was fixed for filing written statements, and this Rule was granted on the 1st June, and further proceedings were directed to be stayed pending the disposal of the Rule.

8. The opposite party has appeared by Counsel to show cause and the learned District Magistrate has shown cause by a letter.

9. The second ground taken in the petition is as follows:

For that the dispute in respect; of which the present proceeding has been drawn up not being one in respect of any land or water within the meaning of Section 145, Criminal Procedure Code, the learned District Magistrate had no jurisdiction to proceed under that section and make the order of attachment complained of.

10. The first question for consideration, therefore, is whether the subject matter of dispute comes within Section 145 of the Criminal Procedure Code. Proceedings under that section can be taken where a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof". Sub-section (2) of that section lays down: For the purposes 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". The subject matter of dispute in the present case is lac grown on trees.

11. It is alleged by the petitioners that the process by which they and other tenants have been growing lac upon trees on their holdings is that described in the Encyclopedia Britannica, under the heading of lac", and which runs as follows: "Lac, a resinous incrustation formed on the twigs and young branches of various trees by an insect, coccus lacca which infests them.... As soon as the minute larval insects make their appearance, they fasten in myriads on the young shoots, and, inserting their young proboscides into the bark, draw their nutriment from the sap of the plant. The insects begin at once to exude the resinous secretion over their entire bodies; this forms in effect a cocoon, and the separate exudations coalescing, a continuous hard resinous layer regularly honey-combed with small cavities is deposited over and around the twig. * * * * To obtain the largest amount of both resin and dye stuff, therefore, it is necessary to gather twigs with their living inhabitants in or near June and November,--Lac encrusting the twigs as gathered is known in commerce as "stick lac...."

12. In the counter-affidavit of Fazil Biswas, filed on behalf of the opposite party, the process by which lac is grown by them is stated thus: "Lac cannot be grown on the same plum trees twice every year. To begin with, the branches of plum trees are out in the Bengali month of Falgoon; then the new branches and leaves begin to shoot out. Then, in the month of Ashar little twigs covered with lac germs are placed over and together with new branches and thereupon lac begins to swarm and spread over the new branches. Thereafter, in the month of Kartic, this crop is collected. This process is repeated in respect of those other trees on which lac is sown in the month of Kartick and collected in the month of Bysack". Whatever may be the difference between the two processes stated above, it is clear that lac is not a natural product of the tree, but is produced on the trees by a parasite. The learned District Magistrate himself, in showing cause, points out that "lac is not a thing that is allowed to grow by itself: a certain quantity of each year"s crop is saved as seed and a month or two later is attached to the trees by human agency from which the next crop develops."

13. It is contended on behalf of the opposite party that lac comes within the expression "crops" of land. We do not think, however, that lac is a crop. The meaning of the word "crop" as given in dictionaries is as follows: "The plants or grains collectively that are cultivated for consumption: also the soil product of a particular kind, place or season, etc., (See the Standard Dictionary).

14. "The produce of the field, etc.... The annual produce of plants cultivated or preserved for food especially that of the cereals; the produce of the land either while growing or when gathered; harvest * * * * with qualification or contextual specification. The yield or produce of some particular cereal or the plant in a single season or in a particular locality. The crops the whole of the plants which engage the agricultural industry of a particular district or season. * * * * The annual or seasons yield of any natural product". (See Oxford Dictionary).

15. It has been argued that people speak of a lac crop, and hence that lac is a crop within the meaning of the term as used in Section 145. People also talk of a crop of hair or a crop of cases and we think it is quite clear from the words of Section 115 that crop is there restricted to something the produce of the soil. It is next contended that "tress" are "produce of land", and an observation in the case of Maharaja Suria Kanta Acharya Bahadur v. Maharaja Jagadindra Nath Roy Bahadur 11 C.W.N. 198 at p. 201 : 5 Cr. L.J. 32 is relied upon, where the learned Judges observed;--"The gazari trees may come within the term other produce of land." "

16. It may be conceded that "trees" are produce of land. But it does not follow that anything produced on trees is also "produce of land". We are not concerned with the definition of "immoveable property" as given in the Transfer of Property Act or the General Clauses Act which were referred to in argument, because, although the words "tangible Immovable property" occurred in the Criminal Procedure Code of 1882, they are replaced by the words "land or water" in the present Code. The ordinary signification of the expression "land" has been extended to certain other things (among others) to "crops or other produce of land". But in order that the thing may be called land it must be (leaving aside the other things which have no application to the present case) either "crops" or "other produce of land", As stated above, "trees" may come within the definition, of land as being "produce of land," but we are unable to hold that lac which is not a part of the tree itself, but is a parasitic growth on the tree is also "produce of land." It is said that as the lac insects draw their sustenance from trees, the lac is part of the trees. But, in order that a particular thing may fall within the definition of land, it must be either land or "crops" or "produce of land". It is not open to us to add to, or extend the meaning of the expression "land" as given in the section. We think that lac cannot be called "produce of land" unless we hold that a parasitic growth on a tree which is a produce of land is also land, and that cannot be done without straining the language. We are accordingly of opinion that lac" does not fall within the meaning of the expression "land" in Section 145, Criminal Procedure Code. That being so, the proceedings held u/s 145 were without jurisdiction. It is contended, however, on behalf of the opposite party that, even if the case does not come u/s 145, the right of using the trees for growing lac might come u/s 147 which relates to a dispute concerning the right of use of any land. But the definition of "land", as including "crops or the produce", is for the purpose of Section 145 only and there is no such definition in connection with Section 147. In the next place, even assuming that "land" in Section 147 also includes "crops or other produce of land", no proceeding has been drawn up under that section, and even if any such proceeding were drawn, the order of attachment of the lac was without jurisdiction, as Section 147 does not provide for attachment and, having regard to the subject-matter of that section, no order for attachment can be made.

17. The third, ground taken in the petition runs as follows: "For that, in view of the entries made in the finally published Record of Rights having the force of

decrees of the Civil Court, and in view of the result of the suits u/s 106, Bengal Tenancy Act, the learned District Magistrate was not competent to proceed u/s 145, Criminal Procedure Code, in respect of the dispute which has been in effect finally determined by the Civil Court".

18. It appears that the Mathurapur estate comprises Touji No. 60 and several other Toujis, and in the course of the Settlement proceedings which took place in the year 1917-1918. it was claimed on behalf of the Zemindar that the tenant had no right to out and appropriate the trees on their holdings. No question, however, was raised with respect to the right of growing lac. The Settlement Officer, Mr. Nelson, made enquiries into the dispute about the right to trees (in Touji No. 60); took evidence on both sides, and came to the conclusion (see his note dated the 19th June 1917) that the tenants have the right to out down and appropriate tree" in Touji No 60, and by his order dated 11th August 1917, directed that, "after the entry of fruit trees, in the khatian will be entered "fruit and timber belong to the raiyat,"" In the case of non-fruit bearing trees the entry will be "timber belongs to the raiyat"\\ It further appears that in 1918 a Revenue Officer made enquiries as to the right to trees evidently in respect of all the Toujis. Both the landlords and tenants were represented by Pleaders and witnesses were examined on both sides. The Revenue Officer submitted his report (together with the evidence and written arguments filed by both parties) to the Settlement Officer to the effect that the tenants have full right to out and appropriate trees on their own lands without the landlord's permission, and suggested that a note be made to that effect in "Circle I and all villages". The Settlement Officer, Mr. Nelson, thereupon made the following order on the 5th July 1918: "Make an entry in each case where there are trees The raiyat can out the trees and appropriate the wood"". But although such an entry was directed to be made in "each case" by the Settlement Officer, Mr. Nelson, it appears that such an entry was made in the Record of Rights relating to lands of Touji No. 60 only and no such entry was made in respect of the lands of other Toujis in the finally published Record of Rights, The landlords (the Mathurapur Concern) thereupon instituted two sets of suits u/s 106 of the Bengal Tenancy Act one in respect of Touji No. 60 and the other in respect of the other Toujis, for a declaration that the tenants had no right to out down or appropriate trees, and that entries to that effect might be made in the Record of Rights. These suits were transferred to the Subordinate Judge for trial, The tenants filed written statements. Pending those suits, the present proceedings u/s 145, Criminal Procedure Code, were started, and the Mathurapur Concern applied for withdrawal of the said suits with liberty to bring fresh suits on the ground that there were formal defects in the plaint, and on other grounds. The application was opposed on behalf of the tenants, and the learned Subordinate Judge refused to grant permission to withdraw with leave to bring fresh suits. The Mathurapur Concern, however, withdrew the suits without leave to bring a fresh suit. It is accordingly contended on behalf of the petitioners that, as the effect of the withdrawal of the suits, without leave to bring fresh suits, was to preclude

the landlords from bringing fresh suits in respect of the same subject-matter having regard to the provisions of Order XXIII, Rule 1 of the Code of Civil Procedure, they were debarred from disputing the rights of the tenants to the trees.

19. It is unnecessary to consider the precise effect of the withdrawal of the suits upon the rights of the landlords, if they have any. There was the order of the Settlement Officer (Mr. Nelson) directing entries to be made in the Record of Rights to the effect that the tenants have the right to cut down and appropriate the trees on their holdings. It is true, for some reason or other, the entries as directed were not made in the finally published Record of Rights in respect of the lands of all the Toujis, and it appears that that was one of the grounds upon which the withdrawal of the two suits were applied for. But a suit lies u/s 106 for the decision of a dispute not only regarding any entry made by a Revenue Officer in the Record of Rights, but also with respect to any omission made from the Record of Rights, and the suits could have been proceeded with for declaration that the tenants had no right to the trees, and for making entries in the record accordingly. We may also refer here to a criminal case which originated in a dispute between a lessee of Mr. Hennessey (the predecessor-in-title of the Mathurapur Concern) and two tenants of the estate with regard to the collection of lac from trees standing on lands by the tenants, in the year 1918. Each party charged the other with theft of stick lac, and in the case against the tenants, summons were issued. The latter moved the High Court and obtained a Rule. The learned Judges (Richardson and Hude, JJ.) in quashing the proceedings See *Amrit Manjhi v. Emperor* 51 Ind. Cas. 668 : 46 C. 854 : 23 C.W.N. 623 : 29 C.L.J. 322 : 20 Cr. L.J. 508 observed: "in the view we take, regard being had to the nature of the dispute, there is little reason to suppose that the charge of theft, from whichever side it comes, will be substantiated. The dispute is eminently one for the Civil Courts where only it can be finally determined, It will be to the interest of all parties that a decision should be sought for there. The practice of taking to the Criminal Courts, for the purpose of a preliminary skirmish, disputed claims involving questions of right and title, about which the parties may intelligibly and with perfect good faith take opposing views, is in our opinion much to be deprecated". We entirely agree with those observations, and it is very much to be regretted that, in spite of the opinion expressed in the above case, the Mathurapur Concern did not think it fit to proceed with the suits actually brought by them and in which the rights of the parties could be satisfactorily determined, but withdrew them even when leave to bring fresh suits was refused by the Court, and that the Magistrate, in the face of the order of the Settlement Officer, and the fact that civil suits were pending for the determination of the rights of the parties to the trees, thought fit to start proceedings u/s 145 of the Criminal Procedure Code, The learned Magistrate says that the withdrawal of the suits could not possibly affect the right to take the crop which was growing on the trees long before the suits were withdrawn" and in another passage says, "my information is that the landlords grew the lac", But

we think that the version of one party should not have been accepted before any evidence was gone into as to the fact of actual possession. No doubt it was necessary to take steps at once to avert serious breach of peace which was apprehended by the Police; but proceedings could have been effectively taken u/s 107 to bind down the parties.

20. The learned District Magistrate in showing cause refers to the findings of his predecessor, Mr. Lindsay, to the effect that the Zemindar for many years previous to 1916 had let out the right to grow lac on all plum trees in the estate including those standing on tenants' holdings, to persons who made a business of lac cultivation, and who were not tenants of the estate at all but residents of other districts who came at stated times solely for the purpose of placing the seed lac on the trees and taking it away when ripe; and that the tenants never themselves grew lac even on trees on their own holdings. These findings, however, were arrived at in criminal proceedings, and before the orders passed by Settlement Officers specially entrusted with the ascertainment and Record of Rights of landlords and tenants, and who enquired into and determined such rights on the spot.

21. The petitioners alleged that they and other tenants under the Zemindari having right of occupancy and other superior rights have enjoyed the right to cut and appropriate fruit growing on other trees upon their holdings and to otherwise enjoy the usufruct thereof, the Zemindar having no right or voice to interfere therein, and that, as an incident of their said right to the trees upon their holdings, the said tenants including the petitioners and their predecessors have always been growing lac upon trees on their holdings.

22. This is denied by the opposite party who allege that the tenants have no right to the trees, that the predecessors in-title of the Mathurapur Concern for the first time introduced the cultivation of lac in the estate, and brought men from other places who had knowledge of such cultivation, and through them (the adhidars) they and their predecessors have been growing and collecting the lac on trees both on khas land as well as lands in the possession of tenants, that the Court of Wards who was in charge of a portion of the Zemindari for some time used to do the same, and that the tenants had no right to the same. We cannot express any opinion on the point, as no evidence has been taken, and no written statements even have been filed by the parties, and what is stated above is taken from the affidavits filed by the parties and the documents referred to by the parties before us. We are not in a position to express any opinion on the questions, nor are we concerned now with the relative values of the findings arrived at by Mr. Lindsay in the criminal proceedings and Mr. Nelson in the Settlement proceedings. All that we mean to say is, that a dispute such as the present ought not to have been made the subject matter of a proceeding u/s 145 of the Criminal Procedure Code. In the view we have taken of the first point (the second ground of the petition), however, it is unnecessary for us to discuss the matter further, or decide whether the order was wrong on the third ground taken

in the petition.

23. The learned District Magistrate being evidently of opinion that the case comes within the purview of Section 145, Criminal Procedure Code, was of course quite right in directing the lac to be attached. But the action taken by him with respect to the lac after it was attached is open to serious comment.

24. It appears that after the attachment, the Magistrate employed the men (the adhidars) of the Mathurapur Concern to collect the lac from the trees standing on the holdings of the tenants, and had it stored in the lac godowns of the Mathurapur Concern. This Rule was granted by this Court (Walmsley and Cuming, JJ.,) on the 1st June; further proceedings were directed to be stayed, and the Rule was made returnable on the 11th June. It appears that on the 7th June the Mathurapur Concern issued notices to the public that the lac was grown by them and would be sold by them at their Cutchery where it was stored, on the next day, i.e., the 8th June. On the 3th June the tenants applied to the Magistrate to stay the sale, but the lac was sold on the next day, the 9th June. In the face of the order of this Court directing further proceedings to be stayed, the District Magistrate should have stopped farther proceedings as he was bound to do. The learned Magistrate, in his letter dated the 4th June, showing cause, states that he made "arrangements to have the crops out and sold operations which must be performed within a limited time otherwise the entire crop becomes spoiled and useless "...the cutting and preparation of the lac for sale requires a certain amount of skill and that, entrusting it to those who are not accustomed to the work, would result in a considerable quantity of the crop being damaged and unsalable. Accordingly, I employed the landlords' lessees as the agents; but I wish to emphasize the point that not a single stick of lac is being out or taken to the godown except under the direct supervision of a responsible Police Officer and that it is being stored in a pucca godown of which the Deputy Superintendent of Police himself keeps the key. There can, therefore be no question of loss or damage to the crop which would be sold by the Police in the ordinary way at the godown to purchasers from other districts who come every year and the proceeds would be deposited in the treasury ready to be made over to whichever party succeeded in proving its case in the Section 145 proceedings."

25. We have no doubt the District Magistrate acted with a view to save the lac from loss or deterioration, but we cannot approve of the manner in which it was carried out. It may be that the outing and preparation of the lac for sale requires a certain amount of technical skill", but each party asserted that they had always been growing and collecting lac, and each party claimed that they had grown, and claimed the right to collect and sell the lac in dispute; and one of the parties (the lessees of the Mathurapur Concern) was employed to do so to the entire exclusion of the other, and the lac was stored in the godown of the Mathurapur Concern. However that may be, the Mathurapur Concern should not have been allowed to issue public notices for the sale of the lac. The notice issued by the Mathurapur Concern on the 7th June was to the effect that the lac grown by the

Mathurapur estate on all the trees on the jote lands of the tenants had been out with the help of the Police and was in Police custody and that about 250 maunds put of the said lac would be sold at the godown of the Mathurapur Kothi of the Mathurapur Zemindari Company on the 8th June at 4 p. M. Thereupon a petition was submitted on behalf of the tenants to the District Magistrate annexing a copy of the notice. They pointed out that with the object of having their rights proclaimed, and with a view to appropriate the lac grown by the tenant?, and in disobedience of the orders of the Magistrate the Mathurapur Concern had issued notices on the 7th June for holding private sale of the lac on the 8th. They further pointed out that a Rule had been granted by the High Court, and the 11th June had been fixed for the hearing, that the opposite party had with a view to appropriate the lac grown by the petitioners at a small price bad given short notice of the sale, and that if the sale were held on that day it could not fetch a proper price because, in order to secure purchasers of lac and sell it on competition at high prices, notices should be given at least at Pakur, Dhulyan, Sahebgunge and other places, and that the petitioners would Buffer serious loss if the sale were held on that day and prayed that the sale might be stayed. The District Magistrate's order upon the petition was as follows:

I am informed by Superintendent, Police, who was present at the sale, that several buyers were present from the places mentioned in this petition, and that the lac fetched Rs. 80 per maund which is a very high price. If the lac had been kept any longer in the godown, it would have deteriorated and would not have fetched so high a price. No loss has been caused to any one as the full value has been deposited in the treasury and will be made over to whoever proves his case in Section 145 Criminal Procedure Code proceedings.

26. Another petition appears to have been submitted later on the 9th June, and which ran as follows:

1. That the first party issued a notice on 7th June 1920 advertising for the private sale of all lac deposited in the godown of the first party under Police control which have cut from the trees of the tenants and attached under your Honour's order to the utter disregard of the solemn order of the Court and in order to exercise their own absolute right and control over the property and to the utter ignorance and without the knowledge of the second party.

2. That the date of sale in the aforesaid notice was fixed for 8th June 1920 at 4 p. M. and the place of sale was notified as the Cutchery house of the Concern. The petitioners beg to file herewith a copy of the said notice for your Honour's perusal.

3. That the second party have come to know that some lac has been sold away in pretence of the Superintendent of Police at Mathurapur at the appointed time and the petitioners beg to submit that all this has been done by the first party in hot haste and with a sinister motive.

4. That all proceedings have been stayed under the orders of the Honourable

High Court, and the Honourable High Court has fixed 11th June for the hearing and disposal of the Rule granted to the second party.

5. That the petitioners beg to submit that, in spite of the above orders, the first party have acted illegally in selling away the lac and the petitioners have reasons to believe that the lac have been sold away at an abnormal value and they entertain every doubt of the misappropriation of the money realised by such sale by the first party.

6. That the petitioners beg to submit that the lacs were grown by them on their own trees and they are entitled to them in their own right and title thereto.

7. That the petitioners, therefore, humbly pray that your Honour will be graciously pleased to proceed against the first party for their illegal and wrongful act and pass orders for the deposit of the value in Court immediately, and pass such other orders as it may deem fit and proper under the circumstances of the case.

The petitioners beg to submit that they filed a petition in the locality at 5 P.M. before the Superintendent of Police for stay of sale, there was delay of filing this petition by one hour as they had to come to town for legal advice.

27. The District Magistrate made the following order on the said petition on the 9th June 1920:

28. This petition is based on a misconception of the facts. The correct facts are as follows:

If lac is kept too long in the godown it deteriorates, therefore, it was necessary to sell the las that had been first gathered in order to obtain the highest possible price for it. I accordingly directed the Police to hold a sale of half the total crop to begin with, and, in accordance with my orders, the Superintendent Police personally went to Mathurapur and held the sale. The notices were issued by the Mathurapur Zemindari Co., at request of the Police and the Company was not acting on its own behalf, but simply as agents on behalf of Government, to sell the lac which was under attachment by and the property for the time being of Government. There is thus no assertion of any right by the Company nor are the claims of the tenants prejudiced in any way nor is there anything illegal or sinister about the proceedings which were all done openly in accordance with my orders to prevent loss of the lac The tenants are not entitled to deal with the lac so long as it is under attachment. The price obtained was Rs. 80. 1 per maund which is the highest figure I have ever heard of, bidders were, as appears from the Superintendent Police's report, present from Pakur which is the center of the lac industry and the bidding was keen. There can, therefore, be no question of any damage having been caused to the tenants by the sale, and as for misappropriation of the proceeds by the Zemindars that is out of the question, as he has deposited Rs. 1,500 in the treasury as security which more than covers the amount realised at the sale. There still remains about half the crop which is

not yet ready for sale. Before it is sold, notice will be issued as usual and the tenants may fetch any one they like to bid. The Zemindar is under agreement with the Collector to deposit the full amount realised in the treasury, if that comes to more than the Rs. 1,500 already deposited.

29. It appears from what is stated by the District Magistrate in the above orders and in his letter to this Court showing cause, that there was necessity for taking prompt action, because, as the learned Magistrate puts it,..."the operations of cutting and selling the lac must be performed within a limited time otherwise the entire crop becomes spoiled and useless". But, as stated above, the men of the opposite party were employed to cut and collect the lac to the exclusion of the petitioners. Even if the cutting and collection of the lac by men of the Mathurapur Concern and the storing of it in their godowns were justified by the exigencies of the situation, we do not see any justification for allowing the Mathurapur Concern to issue notices to the public for sale of the lac. It is stated in the order of the 9th June that they did so at the request of the Police and as agents of the Government to sell the lac which was under attachment and the property for the time being of the Government. It is difficult to see why the Police itself could not issue the notices and why one of the parties to the proceeding was requested to issue the notices of sale, The notice issued does not state that they were doing so on behalf of the Government or that the lac was Government property. The notice stated that the lac was grown by them and would be sold at their Cutchery on the 8th June. The notices were issued on the 7th June that the lac would be sold the next day, the 8th June. The tenants pointed out that the notice was a very short one, and that notices should be issued at various places mentioned in the petition and the sale stayed. Assuming that the sale could not be postponed till the 11th June, the date fixed for the hearing of the Rule, without risk of loss to the lac, it does not appear why notices were not issued earlier and why the Police left it to one of the contending parties to arrange the business. The fact that further proceedings had been ordered to be stayed by the Rule issued by this Court was brought to the notice of the District Magistrate, and he must have been aware of the order staying further proceedings, at any rate, on the 4th June when he wrote the letter showing cause. If urgent action had to be taken for selling the lac, we do not understand why the matter was not represented to this Court, and why directions of this Court were not obtained. The letter showing cause, however, WAS written by the District Magistrate on the 4th June, i.e., before the notices of sale were issued by the opposite party and before the petitions referred to above were submitted by the tenants, We think, therefore, that an explanation should be sought for from the District Magistrate about the matters referred to above and we direct accordingly.

30. Before concluding this judgment, we think it necessary to point out the impropriety of the District Magistrate's writing a letter to the Subordinate Judge before whom the suits u/s 106, Bengal Tenancy Act, were pending, for postponement of the suits. It appears that, while the suits were pending, the District Magistrate wrote a letter to the Subordinate Judge which runs as follows:

Malda,

18. 5. 20.

Dear Sir,

I understand that certain Section 106, Bengal Tenancy Act, cases of Mathurapur estate are fixed for to-morrow- The Manager informs me that he will be unable to produce his evidence then because his principal witnesses, the lac adhidars, are all engaged on behalf of Government in cutting lac. He asks me to confirm this statement to you so that you will not think it is put forward merely as an excuse to gain time. The statement is quite correct. The entire lac crop has been attached by me u/s 145, Criminal Procedure Code, and I have employed the adhidars as agents on behalf of Government to cut the lac under Police supervision as they are the only persons who know how to handle it. If they are taken away to give evidence here the work will be at a stand still and much of the crop will be destroyed, which would not be to the advantage of the tenants supposing they win the Section 145, Criminal Procedure Case.

A.K. Jameson.

31. We think the Magistrate would have been well advised to avoid writing such a letter as his action was likely to be misconstrued. Even if any confirmatory statement of the District Magistrate was justifiable, in view of the fact that the witnesses had been employed by him as Government agents to collect lac, it could and should have been made by an affidavit sworn by some officer of the Government and filed in Court.

32. The learned District Magistrate in his letter showing cause refers to the nature of the action he had taken in order that his Court may not think that he had acted in an arbitrary or partisan spirit" and also refers to the entirely mistaken" idea of the tenants that he was biased in favour of the landlord. We have no doubt that he acted in good faith, and in order to avoid loss to the lac. But the facts stated above, viz., that the men of the opposite party were employed to one and collect the lac (though under Police supervision) to the exclusion of the petitioners; that the lac was stored in the godowns of the opposite party; that he wrote the letter to the Subordinate Judge to help the opposite party in obtaining adjournment of the case; that the opposite party were allowed to issue notices for sale of the lac in their Cutchery as if it was their own property, and that, in spite of his attention having been drawn to the notices issued by the opposite party and the Rule issued by this Court, the District Magistrate took no notice of it, nor obtained directions of this Court, all these are calculated to create an impression that the Magistrate was biased in favour of the opposite party.

33. We set aside the proceedings u/s 145, Criminal Procedure Code. The question of the disposal of the lac and the sale-proceeds of the portion already sold will be dealt with hereafter.