
(1919) 03 CAL CK 0069
In the Calcutta High Court

Ambica Nath Roy and Another

APPELLANT

Vs

Moulvi Wajedali Khan Pani and Others

RESPONDENT

Date of Decision : 11-03-1919

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146

Citation : 50 Ind. Cas. 822

Hon'ble Judges : Shamsul Huda, J;Richardson, J

Bench : Division Bench

Judgement

1. This Rule relates to certain proceedings which were initiated u/s 145 of the Code of Criminal Procedure. The proceedings terminated with an order made by the Magistrate u/s 146 attaching the land which was the subject of dispute between the parties.

2. The Rule is directed against that order and it was issued on the ground that the Magistrate had not applied his mind judicially to the evidence bearing on the question of possession. The Magistrate is only entitled to make an order u/s 146 under the following conditions: firstly, if he decides that at the date of the order u/s 145, Criminal Procedure Code, initiating the proceedings, none of the parties was in actual possession, or secondly, if he is unable to satisfy himself as to which of them was then in such possession. In the present case the Magistrate has not found definitely that none of the parties was in actual possession of the subject of dispute. He says that" it is very doubtful whether any party has really been in such possession of the disputed fishery as is contemplated by Section 145 of the Criminal Procedure Code. But he has not decided the case on that footing. He made the order on the footing that he was unable to satisfy himself on the evidence on the record as to which of the parties were in actual possession. The parties adduced evidence and there is a considerable body of evidence on the record coming from the one side or the other. The evidence comprises documentary evidence bearing on the question of possession and among other documents is the Record of Rights published in October 1915. When

the section speaks of the Magistrate being unable to satisfy himself, it of course contemplates that the Magistrate has considered the evidence fairly and judicially for the purpose of arriving at a decision. What we feel in the present case is that in view of the extreme brevity of the Magistrate's judgment and the fact that important materials placed before him, such as the Record of Rights are not specifically referred to, the Magistrate did not give to the case that judicial consideration which the law requires. In the circumstances, we have come to the conclusion that the Magistrate's order must be set aside and the Magistrate directed to take up the case again from the stage at which it stood after the evidence was recorded and to rehear the parties or their Pleaders if they so desire, and then to dispose of the case according to law.