

(1930) 05 CAL CK 0044
In the Calcutta High Court

Anadi Lal Mukherjee and Others

APPELLANT

Vs

Sukh Chand Mandal and Others

RESPONDENT

Date of Decision : 09-05-1930

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 439

Citation : AIR 1930 Cal 715 : 129 Ind. Cas. 610

Hon'ble Judges : Suhrawardy, J;Costello, J

Bench : Full Bench

Judgement

Costello, J.—This is an application u/s 439, Criminal P.C., in respect of an order made by the Sub-Divisional Magistrate¹ of Satkhira on 22nd December 1928 under the provisions of Section 145, Criminal P.C. The proceedings which eventually resulted in making that order were protracted to a most remarkable extent. For it appears that the proceedings out of which the order finally emerged, began by a report made by the police to the Magistrate in question on 18th January of the year 1926 when he reported that there was a likelihood of trouble between the contending parties who were disputing possession to a certain plot of land. Actually before that date some of the parties had been brought before a Court for the purpose of being bound over under the terms of Section 107, Criminal P.C. These proceedings ultimately terminated. But apparently nothing more was done in respect of the proceedings u/s 145 until 9th June 1926 when they were dropped and fresh proceedings with amended boundaries with regard to the properties were drawn up on 27th July 1926 and the lands in dispute were then attached. The matter, as I have said, dragged on from that date until December 1928. The real question which we have to decide is whether or not the learned Magistrate was right in drawing up proceedings in July 1926 which were purported to be based on the police report of January 1926 and upon nothing else.

2. It has been urged before us that if cannot rightly be said that in July 1926 there was a likelihood of a breach of the peace between the contesting parties by

reason of the situation as it had previously existed in January 1926. We are not concerned with the question of the subsequent delay as between July 1926 and December 1928. But one cannot help remarking in passing that this proceeding seems to have taken a course which never could have been contemplated by the terms of Section 145 which after all are designed to secure that a status quo should be preserved and a breach of the peace prevented as between the two disputing parties or sets of disputing parties pending the time one side or the other should have recourse to a civil Court in order that their rights with regard to the land might be finally determined. It is to be borne in mind that by Section 145, Sub-section (1), the Magistrate of the class therein referred to is to make an order in writing if he is satisfied that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof. The condition precedent for making an order of the kind contemplated is that a breach of the peace is likely. The meaning of the word "likely" has been, considered in a number of reported cases and on the whole the decisions indicate, I think, that the word "likely" indicates some degree of futurity though it has been said that the word "likely" does not mean imminent or immediately to happen. We may take it for the purpose of this section, that the word "likely" is to be treated as if it is synonymous with the word "probable." In the present instance the police reported as far back as January 1926 that a breach of the peace was then likely or anticipated if no steps were taken, and the matter was recorded by the Magistrate as one of emergency; in other words it was considered in January 1926 that the matter was urgent. So that the position was that in January 1926 a dispute likely to cause a breach of the peace existed. I use the word "existed" advisedly, because the word in the section is "exists." That means that there must be a dispute in existence which is likely to cause a breach of the peace at the time when the order is made. Now there is nothing to show that the state of affairs which existed in January 1926 still existed in July 1926 so far as it appears from the order which the Magistrate made some two years later. We therefore think, from the actual wording of the section itself, that the making of an order some months after the report on which it was purported to be passed, cannot be supported. There are authorities for that view in cases which unfortunately we have not had the advantage of seeing because the reports in which they appear are not available. Apparently it was held in 2 Criminal Law Review 85, which is cited in Aiyar's Book of Criminal Procedure Code that if the circumstance was that there was danger in the past, proceedings based on a likelihood of a breach of the peace six months previous to the date of the preliminary order would be illegal. There is also another case Chhidilal reported in 2 P.L.T. 650 where it appears to have been decided that proceedings cannot be started on the basis of a police report more than three months old, there being no likelihood of a [breach of the peace when the Magistrate actually drew up the proceedings. Now that seems to me to be a reasonable interpretation to be put upon the terms of the section. It is necessary for making an order of this description that the Magistrate should be satisfied at the time of drawing up the proceedings that there is then existing a likelihood of breach of

the peace arising from the disputes between the parties with regard to the land in question.

3. Taking that view of the matter we think that this order of the Magistrate must be set aside. That will be without prejudice to the making of any fresh order if this or any other Magistrate is satisfied that there is a likelihood of any breach of the peace existing at the time when the matter comes before him. The rule is made absolute in these terms.

Suhrawardy, J.

4. I agree.