

(1902) 01 CAL CK 0014
In the Calcutta High Court

Baida Nath Majumdar

APPELLANT

Vs

Nibaran Chunder Ghose

RESPONDENT

Date of Decision : 16-01-1902

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1902) ILR (Cal) 242

Hon'ble Judges : Stephen, J; Prinsep, J

Bench : Division Bench

Judgement

Prinsep and Stephen, JJ.—On receipt of a police report to the effect that there was a breach of the peace likely to take place between certain persons in consequence of a dispute concerning land, the Magistrate found that there were no sufficient grounds for proceeding u/s 145 of the Code of Criminal Procedure. One of the parties to the dispute then moved the District Magistrate to proceed. The District Magistrate thereupon recorded a proceeding u/s 145 of the Code of Criminal Procedure, on the 20th July, within the terms of Sub-section (1), and it further appears that, on its being afterwards brought to his notice that certain persons, who were concerned in such dispute, came within the terms of a decision of this Court in the case of Ram Chandra Das v. Monohur Roy I. L. R. (1893) Cal. 29., he drew up a fresh proceeding so as to make these persons parties. The objection that has been raised before us is that under the authority of the case of Chathu Rai v. Niranjan Rai I. L. R. (1893) Calc. 729. such an order could not be passed, the District Magistrate having no jurisdiction. It seems to us that the present case and that case are distinguishable. The District Magistrate in the case of Chathu Rai v. Niranjan Rai I. L. R. (1893) Cal. 729. held that the order of another Magistrate striking off a case u/s 145 on the ground that there was no immediate apprehension of a breach of the peace was ultra vires, and he restored the former case u/s 145 and transferred it to another Magistrate. In the case now before us, there was no proceeding u/s 145. The Magistrate expressed the opinion on a police report that there was no ground for such proceeding. The District Magistrate on the same police report expressed a different opinion and,

on that police report, he took proceedings u/s 145. We cannot find that the order of the Magistrate declining to take proceedings u/s 145 can operate as any bar to the action of the District Magistrate. The present case, therefore, is a new case u/s 145, whereas in the case of Chathu Rai v. Niranjana Bai I. L. R. (1893) Cal. 729. the old case was revived by the order of the District Magistrate. The rule is therefore discharged.