
(1926) 12 AHC CK 0030
In the Allahabad High Court

Banka Singh and Others

APPELLANT

Vs

Gokul

RESPONDENT

Date of Decision : 09-12-1926

Acts Referred:

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

Citation : AIR 1927 All 286 : (1927) ILR (All) 325

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Iqbal Ahmad, J.—The order of the learned Magistrate dated the 13th of May 1926, purporting to be one u/s 145, Criminal P.C., cannot be supported.

2. It appears that on a petition dated the 13th of March 1926, filed by Gokul Ahir the opposite party against Sital Rai and certain other persons, the learned Magistrate passed an order purporting to be u/s 144, Criminal P.C., directing the attachment of certain crops on Plot No. 734/9/2. Banka Singh and others, the applicants before me were not parties to those proceedings. When the police wanted to attach the crops the applicants before me filed an application in the Court of the District Magistrate, who by an order dated the 29th of March 1926, set aside the order of the Magistrate directing the attachment of the crops and in the exercise of the powers vested in him by Section 436, Criminal P.C., directed a further enquiry u/s 145, Criminal P.C., with a view to "restoring the crops to the party which was in possession of the same." After the order of the learned District Magistrate the case came up before another Magistrate who had succeeded the Magistrate who had passed the order u/s 144, Criminal P.C. That Magistrate, without recording an order as required by Section 145(1), Criminal P.C., and without directing a service of that order in compliance with the provisions of Section 145(3) of the Code, proceeded to decide the matter after

taking into consideration the written statement filed by the parties and the evidence tendered by them. He has held that the title to and possession of the plot in dispute was with the applicant, Gokul, and on that finding has passed an order which is unintelligible to me and which is certainly not an order in terms of Section 145(6), Criminal P.C.

3. It is clear that the provisions of Section 145(1), Criminal P.C., are mandatory and a disregard of those provisions vitiates the entire proceedings in the case. As already stated there was no order drawn up by the Magistrate stating the grounds of his being satisfied, that a dispute likely to cause a breach of the peace existed concerning the plot in dispute, nor did he ever require the parties concerned to put in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. No such order having been drawn up the provisions of Section 145(3), Criminal P.C., were not complied with inasmuch as there was no order in existence which could be served on the parties concerned. It is argued before me by the learned Counsel who appears in support of the order the order of the District Magistrate dated the 29th of March 1926, should be regarded as an order in terms of Section 145(1) of the Code. I cannot accede to this contention. As I read Section 145, Criminal P.C., it appears to me clear that the Magistrate who has to draw up the order is the Magistrate who after drawing up the order proceeds to decide the case. It may be that a District Magistrate after drawing up an order u/s 145(1) and after taking cognizance of the case u/s 145, Criminal P.C., may, under certain circumstances, transfer the case for disposal to a Sub-Divisional Magistrate, but in this case it cannot be said that the learned District Magistrate ever purported to draw up an order u/s 145(1), Criminal P.C., or having drawn up such an order, ever transferred the case u/s 145, Criminal P.C., of which he had taken cognizance to the Magistrate who eventually decided the same. I cannot treat the order dated the 29th March 1926 as an order u/s 145(1) of the Code. It is argued by the learned Counsel for the opposite party that the irregularity, if any, is cured by Section 537 Criminal P.C. That section applies to mere errors, of procedure arising out of mere inadvertence and does not apply to cases of disregard of a mandatory and imperative provision of the Code. The failure of the learned Magistrate to comply with the provisions of Section 145(1), Criminal P.C., vitiates the entire proceedings held in the case and his order must be set aside. Accordingly I set aside the order of the learned Magistrate dated the 13th of May 1926.