
(1926) 05 CAL CK 0041
In the Calcutta High Court

Benoy Chandra Bose and Others

APPELLANT

Vs

Kala Chand Bhuimali and Others

RESPONDENT

Date of Decision : 27-05-1926

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 144, 145, 146, 528

Citation : AIR 1926 Cal 1049 : 97 Ind. Cas. 59

Hon'ble Judges : Graham, J; Duval, J

Bench : Division Bench

Judgement

Duval, J.—In this matter, there was a dispute in connection with two plots of land which the opposite party was endeavouring to use as a hat. Certain proceedings u/s 144, Cr.P.C., were drawn up in respect of them; but the order passed by the Sub-Divisional Officer under that section was set aside by the Additional District Magistrate. On the case then coming up before the Sub Divisional Officer again, he had before him a Police report; but he refused to pass any order for a proceeding u/s 145, Cr.P.C., in respect of these two plots and proposed to proceed against the opposite party only u/s 107, Cr.P.C. Thereupon, an application was made to the Additional District Magistrate u/s 528, Cr.P.C., for the transfer of these-proceedings u/s 107, Cr.P.C., on the ground that the Sub-Divisional Officer had himself been to the spot with the Police and made enquiries into the matter. On the case coming up before the Additional District Magistrate, he took two courses. He transferred the proceedings u/s 107, Cr.P.C., to his own Court for disposal and then, considering the materials on the record and the Police report, he himself drew up proceedings u/s 145, Cr.P.C. in respect of these lands for which the Sub-Divisional Officer had refused to exercise jurisdiction under that section. The Sessions Judge was moved to refer the matter to this Court but he rejected the application. On this Court being moved, the present Rule was obtained on four grounds: (1) That the institution of proceedings u/s 145, Cr.P.C. on the 6th April, 1926, on the Police report dated the 21st February, 19.6, after the order passed by the learned Sub-Divisional Officer is without jurisdiction and bad in law (2). For that, on the facts disclosed in the Police

report dated the 21st February, 1926, the proceedings u/s 145 are without jurisdiction and bad in law: (3) For that the learned Additional District Magistrate could not initiate proceedings u/s 145, Cr.P.C., when the learned Sub-Divisional Officer had refused to take action under the said section on the Police report long ago and his action has the effect of setting aside the said order of the Sub-Divisional Officer which he had no jurisdiction to do, and (4) For that having regard to the nature of the dispute alleged in the case the learned Magistrate had no jurisdiction to proceed u/s 145, Cr.P.C.

2. At the hearing of the Rule, the last ground was not pressed. It was apparently taken on the belief that the second party claimed a 16-anna share in the two plots and the first party had only a claim to a 3-anna odd share. But it now appears that both parties claim exclusive possession of those two plots.

3. The other three grounds may be dealt with together. The main question which arises is whether when a Subordinate Magistrate has refused to take action u/s 145, Cr.P.C., the District Magistrate can take action on the same materials. It is urged on behalf of the petitioners that he cannot and that the proper procedure for the District Magistrate to adopt, since the amendment of the Code in 1923 empowers a reference to be made in cases u/s 145, Cr.P.C. to this Court, is to refer the case to this Court. On the other hand, in the case of *Baida Nath Majumdar v. Nibaran Chunder Ghose* 29 C. 242 : 6 C.W.N. 290 it was held that where a Subordinate Magistrate had declined to take proceedings u/s 145, Cr.P.C. and the District Magistrate on the same Police report expressed a different opinion and instituted proceedings u/s 145, Cr.P.C. the District Magistrate had acted with jurisdiction and that the order of the Subordinate Magistrate declining to proceed u/s 145, Cr.P.C., could not operate as a bar to such action. It is urged that this ruling can be distinguished, on the ground that in the present case, there was no application to the District Magistrate to proceed u/s 145, Cr.P.C. The only application made to him was an application to transfer the proceedings u/s 107, Cr.P.C. from the file of the Sub-Divisional Officer to his own file. It is also urged that there are rulings which go to show that where a Sub-Divisional Officer has refused to exercise his jurisdiction u/s 133, Cr.P.C., the District Magistrate would have no power to proceed under that section but that his proper course would be to refer the matter to the High Court; and, in this connection reliance is placed on the case of *Indra Nath Banerjee v. Queen-Empress* 25 C. 425 : 2 C.W.N. 113 : 13 Ind. Dec 282. I have carefully considered these rulings on the points urged. The question of transfer of Section 107-proceedings is quite distinct from the question as to whether Section 145 proceedings should be instituted. Though the Additional District Magistrate has passed the two orders in one judgment, the two orders are perfectly distinct and I do not find it necessary to invoke rulings which have been used in connection with another section to disagree with a ruling clearly passed in a proceeding u/s 145 of the Cr.P.C. Following that ruling I hold that the Additional District Magistrate had jurisdiction to make the order and proceed u/s 145. For these reasons, the Rule in my opinion, should be discharged.

Graham, J.

4. I agree. The contention that the order of the District Magistrate initiating proceedings u/s 146, Cr.P.C. was without jurisdiction is, in my opinion, without substance. That the District Magistrate has jurisdiction to make such an order cannot be doubted and it is not disputed that he would have had such jurisdiction if he had acted as an origins Court. But it is argued that, in the circumstances of this particular case, he could not do so as there was merely an application before him for transfer u/s 528, Cr.P.C. That, however, does not seem to me to be material and I do not see how the Magistrate can be deprived of his jurisdiction to make such an order if he has such jurisdiction. It has been argued on behalf of the petitioner that the proper course for the District Magistrate to adopt was to refer the matter to this Court. I do not think that the adoption of such a course was necessary. The view that we have taken is supported by the decision in *Baida Nath Majumdar v. Nibaran Chunder Ghose* 29 C. 242 : 6 C.W.N. 290. An attempt has been made to distinguish that case from the present case on the ground that in that case there was an application made before the District Magistrate to draw a proceeding u/s 145, Cr.P.C., whereas in the present case no such application was made but there was merely an application made before him for transfer of a Section 107-proceeding u/s 528, Cr.P.C. I do not think as I have already stated, that that would make any difference. For these reasons, I agree with my learned brother that the Rule should be discharged.