
(1905) 08 CAL CK 0022
In the Calcutta High Court

Khosh Mahomed Sirkar

APPELLANT

Vs

Nazir Mahomed

RESPONDENT

Date of Decision : 12-08-1905

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1906) ILR (Cal) 352

Hon'ble Judges : Rampini, J;Pratt, J;Henderson, J;Ghose, J;Francis William Maclean, J

Bench : Full Bench

Judgement

Francis William Maclean, K.C.I.E, C.J.—The first question submitted on this Reference is "whether an initial order made by a Magistrate, under, Section 145, Clause (1860) 2 W.R. Cr. 31 of the Criminal Procedure Code, is defective because it is not self-contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists, when such grounds appear in the Police report on which the order is founded and to which it makes reference." In my opinion, that question ought to be answered in the negative, namely, that it is not defective. The case has been very fully dealt with by the referring Judges, and I do not think I can usefully add anything either to their reasons or their conclusion. I concur in that conclusion. There has, to my mind, been a substantial compliance with Sub-section (1) of Section 145. No doubt there is a difference of judicial opinion upon the point; but, on the whole, I think that the view taken in the later cases of Goluck Chandra Pal v. Kali Charan De ILR (1886) Cal 175 and Dhanpitt Singh v. Chatterput Singh ILR (1893) Cal 513 ought to prevail. I would, therefore; answer the question, as I have said, in the negative. That being so, the other two questions do not arise.

Ghose, J.

2. I entirely agree with the judgment which has just been delivered by my Lord the Chief Justice. I would only add that the proceeding drawn up by the Magistrate refers in express terms to the Police report, and the Police report sets

out sufficient grounds showing that there was a likelihood of a breach of the peace; and as I read the proceeding of the Magistrate, it is substantially to the effect that he is satisfied upon such Police report that there is an imminent danger of a breach of the peace. In this view of the matter, I am of opinion that there was a substantial compliance by the Magistrate with the requirements of Clause (1), Section 145 of the Code of Criminal Procedure.

Rampini J.

3. I agree.

Pratt J.

4. I agree.

Henderson J.

5. I also agree.