

(1935) 11 PAT CK 0025
In the Patna High Court

Kinei Majhi and Others

APPELLANT

Vs

Gobind Prasad Singh and Others

RESPONDENT

Date of Decision : 12-11-1935

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 147, 203, 438

Citation : AIR 1936 Patna 44

Judgement

1. The petitioners formerly exercised a right of ferry on the Brahmani river, but they were turned but by the tahshildar of the Aul estate in October 1934. On the 26th October one of them reported at the local police station that they had been dispossessed from this ferry, on the ground that both banks of the river had now become part of the Aul estate, and that the petitioners had no longer any right to ply a ferry there. No action was taken on this report by the police. On the 29th October a complaint was made before the Magistrate charging the opposite party with theft and assault and acts of mischief. The Magistrate after enquiry found that the facts stated in the complaint had not been substantiated, and dismissed the complaint u/s 203, Criminal P.C. An application to the Sessions Judge for an order for further enquiry was rejected; but the Sessions Judge remarked that as there was tension between the parties, action under one of the preventive sections of the Criminal Procedure Code might be found advisable. On 19th February 1935 the petitioners applied to the Superintendent of Police that action might be taken. The petition was sent to the local Sub-Inspector for necessary action, and the Sub-Inspector on the 28th February submitted a report to the effect that there was danger of a breach of the peace and that proceedings should be taken u/s 144, Criminal P.C. Subsequently an enquiry was instituted u/s 147, Criminal P.C. where in the Magistrate found that although the petitioners had been enjoying a right of ferry until they had lost possession in October 1934, he must maintain the possession of the opposite party, because the petitioners had not enjoyed possession within three months from the institution of the enquiry, The Sessions Judge has referred the proceedings to this Court u/s 438, Criminal P.C. on the ground that the learned Magistrate erred in treating as the

date of the institution of the enquiry the date when the likelihood of a breach of the peace was brought to his notice.

2. In our judgment the view taken by the learned Magistrate was correct. It cannot be said that the existence of a dispute likely to cause a breach of the peace was brought to the notice of the Magistrate before the police report was received on 28th February 1935 The learned Sessions Judge suggests that it was open to the Magistrate to draw up formal proceedings u/s 147, as soon as the police report was received on the complaint of theft and assault; but as we understand from the papers before us, that report was to the effect that the complaint of assault and theft was untrue, and there is nothing to indicate that the report recommended that action should be taken under any of the preventive sections of the Code. Still less is there anything to indicate that any such action was taken. It cannot be said that the enquiry was instituted by the act of dismissing the complaint under. Section 203, when action u/s 147. was not even contemplated; and the decision cited by the learned Sessions Judge has no application to the facts; of this case. We cannot interfere with the order of the Deputy Magistrate of Kendrapara and the reference is discharged.