
(1903) 06 CAL CK 0032
In the Calcutta High Court
Case No : Criminal Revision No. 1185 of 1902

Mahomed Nur

APPELLANT

Vs

Bikkan Mahton

RESPONDENT

Date of Decision : 22-06-1903

Acts Referred:

Citation : (1903) 06 CAL CK 0032

Judgement

Harington and Brett, JJ.—In this case a Rule was granted calling upon the "District Magistrate of Patna and upon the first party to show cause why the order of the Subdivisional Officer of Bihar", of the 25th September last, should not be set aside on the ground that there was no finding that a dispute likely to cause a breach of the peace existed ; and that there was no evidence upon which the order could be supported.

2. The former of the two grounds was not pressed before us in argument, the argument being directed to the latter ground, namely, that the order was made without any evidence of the fact which would justify the Magistrate in making the order which he did, u/s 147 of the Code of Criminal Procedure.

3. The judgment was not given at once, because, our attention was drawn to a case (1902) 7 C.W.N. 351 by the learned vakil, who appeared to show cause against the Rule, which, he said, established the proposition that an order could be made u/s 145 on the written statement filed by the parties without any evidence of any sort whatever. We referred to the case (1902) 7 C.W.N. 351 and we find that it is not on all fours with the present case, because, in it an order was made, it is true on the written statement of one of the parties, but it was made on the express admission of the other party ; and therefore it is not an authority for the proposition that an order can be made without evidence where the party, who in the ordinary course of things, would oppose the order, does not expressly admit the allegation made by the other party.

4. In the present case the Magistrate appears to have had before him no evidence of any of the facts which would entitle him to make the order in

question. The order in question is in fact made u/s 147 in which it is provided that the procedure to be followed in making this order is that which is laid down in Section 145. In our view, the Magistrate ought to have had some evidence in proof of the allegation contained in the written statement and that he ought not to have made the order without having some evidence to that effect before him.

5. On that ground we set aside the order and direct that the Magistrate do proceed according to law.

6. The Rule is made absolute.