

(1910) 12 CAL CK 0011
In the Calcutta High Court

Ram Saran Pathak

APPELLANT

Vs

Raghu Nandan Gir.

RESPONDENT

Date of Decision : 16-12-1910

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1911) ILR (Cal) 387

Hon'ble Judges : Sharfuddin, J;Holmwood, J

Bench : Division Bench

Judgement

Holmwood and Sharfuddin, JJ.—This was a Rule calling upon the District Magistrate of Gaya to shew cause why the proceedings against the petitioner u/s 145 of the Criminal Procedure Code should not be quashed on the ground that they are without jurisdiction and in direct contravention of the ruling in Guiram Ghosal v. Lal Behari Das I.L.R.(1910) Cal. 578.

2. It has been pointed out to us by the learned vakil who appears to shew cause, and very properly pointed out, that, so far as the declaration of possession of the temple and the land on which it stands in favour of Raghu Nandan Gir goes, that declaration has been made with full jurisdiction, and is not in contravention of any ruling of this Court.

3. The only question which arises in this case is whether the declaration that Raghu Nandan Gir is in possession of the offerings is an order made with jurisdiction or not. It is contended that the offerings made in a temple are of the same nature as the rents and profits arising out of lands. Now Section 145, Clause (2), says : "For the purpose of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property." It appears clear to us that the offerings given by worshippers for the worship of any deity are not profits arising out of a building. If the deity be in a cave or under a tree, as it originally was in years gone by, the offerings would accrue in exactly the same manner. The offerings arise out of the deity, irrespective of the building or the land upon which he may

happen to dwell. To hold otherwise would be to allow the Criminal Courts to interfere with the customary laws of this country. There are certain rules differing in various sects and in various districts as to the apportionment of the offerings between the ground landlord, the actual holder of the temple, the middleman, and the pujari, and the sums which are devoted to the up-keep of the temple. Now it is quite impossible for the Criminal Courts to go into these matters, and it is quite impossible to say that the whole of these offerings belongs to the ground landlord, middleman, pujari or to the endowment. The matter, which depends entirely upon custom and sometimes upon an ancient grant or other documents, can only be adjudicated upon by a competent Civil Court. And that was the view which appears to have guided the Judges who decided the case of *Guiram, Ghosal v. Lal Behari Das* ILR (1910) Cal. 578. They say that "considering also the scope of Section 145 of the Criminal Procedure Code we think that the present dispute (which was the right to perform the duties of a pujari) is certainly not one which was intended that Section 147 should cover."

4. The argument that this case was u/s 147 of the Criminal Procedure Code, and, therefore, does not affect the present case which is one u/s 145 of the Criminal Procedure Code, does not help the petitioner, because a case u/s 147 of the Criminal Procedure Code is to be decided by the same procedure and on the same principles as a case u/s 145 of the Criminal Procedure Code. And as the Judges say, "it may be that it is impossible to perform the duties of a pujari without entering upon the land upon which the temple is built."

5. But when it comes to the question of the offerings being disputed and not the house or the land, it is clear that the dispute is about moveable property; and it is now settled law that Section 145 of the Criminal Procedure Code has no concern with moveable property.

6. We, therefore, consider that the order, so far as it affects the offerings of the temple, was made without jurisdiction, and that portion of the lower Court must be discharged, the Rule being made absolute to that extent, and to that extent only.