
(1920) 11 CAL CK 0002
In the Calcutta High Court

Ranada Ranjan Bhattacharjee

APPELLANT

Vs

Bharat Chandra Saha and Others

RESPONDENT

Date of Decision : 29-11-1920

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(1), 145(5)

Citation : AIR 1921 Cal 631 : 62 Ind. Cas. 180

Hon'ble Judges : Ghosh, J;Beachcroft, J

Bench : Division Bench

Judgement

1. This Rule was issued at the instance of the first party in a proceeding u/s 145, Criminal Procedure Code. The Rule was issued on the second ground in the petition, which was as follows: For that having regard to the admission of both parties that there was no likelihood of a breach of the peace, the learned Magistrate ought to have enquired into and de-sided that point first and the subsequent pro-seeding was without jurisdiction. u/s 145 the Magistrate has jurisdiction to take proceedings if he is satisfied from the Police report or other information that a dispute likely to cause a breach of the peace exists. Then it is open to either of the parties under Sub-section (5) of Section 145 to show that no such dispute exists or has existed. If a party succeeds in doing that, the Magistrate must cancel his order, but subject to that cancellation the order of the Magistrate under Sub-section (1) shall be final. The effect of this is that unless a party is in a position to show to the Magistrate that there is no likelihood of a breach of the peace, the Magistrate's order under Sub-section (1) stands. Therefore, it follows that the mere absence of a finding by the Magistrate that there is likelihood of a breach of the peace does not go to the root of his jurisdiction and is not in itself sufficient for our interference with his order. Here all that has happened is that both parties denied that there was likelihood of a breach of the peace. Experience unfortunately shows that where proceedings are stopped on such an allegation by the parties, the result may be serious and often is the breaking of heads. The Rule is discharged.