

(1920) 11 CAL CK 0012
In the Calcutta High Court

Rasik Chandra Hore and Another

APPELLANT

Vs

Jagabandhu Roy and Others

RESPONDENT

Date of Decision : 29-11-1920

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : 62 Ind. Cas. 326

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

Bench : Division Bench

Judgement

Beachcroft, J.—This Rule was issued on the second ground stated in the petition, namely, that there being nothing to show that there was any likelihood of a breach of the peace between the first and the second parties on the one hand and the third party on the other, there was no foundation for a proceeding u/s 145 so far as the third party was concerned and the whole of the proceedings were without jurisdiction. To understand the meaning of this it is necessary to state the facts. The proceeding was originally drawn up in respect of three persons,—two members of the first party and one person who is the second party. The dispute concerned a jalkar. Subsequently a number of other persons applied to be added as parties to the proceeding. They alleged that the jalkar was theirs, they being co sharer landlords. They alleged at the same time that there was no likelihood of a breach of the peace. The case was transferred from the Magistrate who initiated the proceeding, and then the first two parties filed a "compromise mentioning that there was no longer a likelihood of a breach of the peace as between them. The Magistrate finally made an order in favour of the third party. We are told that there is, in fact, on the record no evidence of any likelihood of a breach of the peace as between the first two parties; and that appears to be borne out by the statement of the Magistrate in his judgment that the first two parties had combined against the third. The flaw in the proceeding appears to be this, that there is no evidence of, and nothing in the proceedings showing, the likelihood of a breach of the peace as between the third party and the first two parties or either of them. The third party had never been a party to

the dispute between the first two parties, on which dispute proceedings were instituted, and, therefore, the order of the Magistrate must be set aside as being without jurisdiction. The consequential order as to costs must also be set aside as a necessary consequence of this order.

Ghosh, J.

2. I agree.