
(1918) 02 PAT CK 0012
In the Patna High Court

Sahdeb Singh and Others

APPELLANT

Vs

Jumon Jolaha

RESPONDENT

Date of Decision : 07-02-1918

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 145

Citation : AIR 1918 Patna 625(1) : 44 Ind. Cas. 336

Hon'ble Judges : Ali Imam, J

Bench : Single Bench

Judgement

Ali Imam, J.—The petitioners in this case were originally proceeded with u/s 107 of the Code of Criminal Procedure and the case continued to be treated as a case under that section till the 6th November 1917, when on the conclusion of the evidence of the second party the learned Deputy Magistrate fixed the 10th of November 1917 for order. He, however, supplemented that by adding the words "proceeding changed to Section 145 of the Code of Criminal Procedure. On the 10th November 1917, the learned Deputy Magistrate took up this case and simply passed an order declaring the first party to be in possession of the land in dispute.

2. The learned Vakil appearing on behalf of the petitioners contends that the order of the 10th November 1917 passed by the learned Deputy Magistrate is without jurisdiction. He urges in support of his contention the failure on the part of the learned Deputy Magistrate to draw up proceedings under sub Clause 1 of Section 145. He also contends that even if he had done so, the order passed by him would still be without jurisdiction inasmuch as the Magistrate was bound not only to take the written statements of his clients, but also such evidence as they might be disposed to offer after action under Sub-clause 1 of Section 145 of the Code of Criminal Procedure was taken. The proceedings taken u/s 107 of the Code and the evidence recorded thereunder could not be accepted as sufficient ground to dispense with the necessity of taking fresh action under Sub-clause 1 of Section 145. Sections 107 and 145 are intended by the Legislature to serve

two distinct purposes and the learned Vakil appearing on behalf of the petitioners has rightly contended that unless and until the proceedings were duly initiated and his clients were given an opportunity of filing written statements and offering evidence, the order passed by the Magistrate would be ultra vires. I agree. The order in question is set aside and the case is sent back to the learned Deputy Magistrate to deal with it in accordance with law.