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**(1966) 06 GAU CK 0003**  
**In the Gauhati High Court**

Sanasam Udhop Singh

APPELLANT

Vs

Pheiroijam Kunjaraj Singh and Others

RESPONDENT

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**Date of Decision :** 23-06-1966

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 107, 145, 145(4)

**Citation :** AIR 1967 Guw 5 : AIR 1966 Guw 5 : (1967) CriLJ 95

**Hon'ble Judges :** Rajvi Roop Singh, J.C.

**Bench :** Single Bench

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## Judgement

Rajvi Roop Singh, J.C.

1. This is a reference by the learned Sessions Judge, Manipur for setting aside an order u/s 145, Cri. P. C., passed by Shri B. Ahmad S. D. M., theubal.

2. The facts giving rise to this reference may be stated as follows:

On 18-2-65 the first party lodged a complaint before the S. D. M., theubal for drawing up a proceeding u/s 107 against the second party Nos. 1 and 2 for illegally disturbing the peaceful possession of the petitioner over his land under Patta No. 85/53-A, Th. The S. D. M. forwarded it to the O/C M. I. P. S. for enquiry and report. The O.C. submitted the report recommending a proceeding u/s 107 Cri. P. C. against the 2nd party. The learned S. D. M. after perusal of the report submitted by the Police drew up a proceeding u/s 107, Cri. P. C. against the 2nd party requiring them to show cause why they should not be ordered to execute a bond for a sum of Rs. 500 for keeping peace for a period of one year. In response to the notice the 2nd party Nos. 1 and 2 submitted a W/S denying the allegation of the 1st party. They contended that the disputed land belonged to 2nd party No. 1 and he had been possessing it for the last 7 or 8 years.

Thereafter on the perusal of the w/s the S. D. M. found that there existed a dispute likely to cause a breach of the peace between the parties. He also found that a proceeding u/s 145, Cri. P. C. would be more appropriate than a proceeding u/s 107, Cri. P. C. He, therefore, changed the proceeding from

Section 107, Cri. P. C. into Section 145, Cri. P. C. and issued notices requiring the parties to file w/s and affidavits etc. In support of their claims. The disputed land was also attached. The parties were asked to file w/s and affidavits on 29-4-1965. On this date both the parties were present and the 2nd party filed one w/s but did not file any affidavit, and the first party neither filed w/s nor the affidavits, therefore, the case was adjourned for 30-4-1965 for filing affidavits, by the 2nd party, and w/s and affidavits by the 1st party.

On this date the 2nd party appeared and" filed 4 affidavits, but the 1st party remained absent without showing any cause, therefore, the S. D. M. proceeded ex parte against the 1st party. The S. D. M. after perusal of the affidavits and w/s came to the conclusion that the 2nd party was in possession of the disputed" land on the date of passing of the preliminary order. He, therefore, decided ex parte that 2nd party No. 1 is entitled to retain possession of the disputed land until otherwise directed by a competent Civil Court, and meanwhile the 1st party is strictly prohibited from making any interference with the possession of the disputed land by the 2nd party No. 1.

3. Being aggrieved with this order of the learned S. D. M., the 1st party filed the revision petition in the Court of Sessions Judge. The learned Sessions Judge has made the reference to set aside the order of S. D. M.

4. I heard the learned lawyers of both" parties. The learned Counsel for the petitioner while supporting the reference vehemently urged that u/s 145(4), Cri. P. C. it is obligatory for the Magistrate to hear the parties before deciding the case. But in this case the Magistrate decided it without giving a hearing to the petitioner. In order to substantiate his contention he pointed out that in this case the date 30-4-65 was fixed for filing affidavits by the 2nd party and the w/s and affidavits by the 1st party. It was not fixed for hearing of the parties, therefore, the decision made by the Magistrate without giving a chance to the 1st party for hearing is against the law and hence it should be set aside.

5. The counsel for the respondents in order to controvert the contention advanced by the learned lawyer for the petitioner strongly averred that the enquiry under this section is intended to be short and summary and it is incumbent to finish it quickly by avoiding unnecessary adjournments. Now 2 months time limit has been fixed by amended Sub-section (4). If one or other of the parties is absent the Court must proceed ex parte against the absent party. In this case the 1st party did not appear on the date of hearing, therefore, the learned Magistrate had no other alternative but to proceed ex parte against the 1st party. This order of the Magistrate is according to law and hence it should be maintained.

6. After having given my most anxious consideration to the arguments advanced on both sides, I find that the main question for decision, therefore, is whether the words "hear the parties" occurring in para 4 of Section 145, Cri. P. C. would include taking evidence of the parties even though they might not have chosen

to file affidavits on their behalf.

7. The words "hear the parties" in the former Sub-section (4) were held to mean hear their evidence and the arguments of their lawyers, if any, but the words "receive all such evidence as may be produced by them" having now been omitted the parties have only a right to be heard i.e., to offer arguments. "Hearing" of parties does not necessarily mean their examination. It merely amounts to granting of audience or hearing arguments.

8. In the light of the above interpretation of Sub-section (4) of Section 145, Cri. P. C. the 1st party was not entitled to adduce evidence but was only entitled to offer arguments. But on the date of hearing the 1st party was absent. If on the date of hearing the 1st party had been present and the Magistrate had not given a hearing in that case his order would have been contrary to Sub-section (4) of Section 145, Cri. P. C. As the 1st party was absent so it rested entirely on the discretion of the learned Magistrate to adjourn the case or not. In view of the evidence on the record the learned Magistrate did not deem it expedient to adjourn the case again and hence he proceeded ex parte against the 1st party and passed the order. In the light of the facts as well as the evidence on the record, the order of the Magistrate could not be called erroneous.

9. In view of my foregoing discussion I see no reason to interfere with the order of the learned trying Magistrate and hence I reject the reference.