

(1903) 01 CAL CK 0017
In the Calcutta High Court
Case No : Rev. No. 1185 of 1902

Syed Mahomed Nur and Another

APPELLANT

Vs

Bikhan Mahton and Others

RESPONDENT

Date of Decision : 22-01-1903

Acts Referred:

Citation : (1903) 01 CAL CK 0017

Judgement

1. In this case a rule was granted calling upon the District Magistrate of Patna, and upon the first party to show cause why the order of the Sub-Divisional Officer of Behar of the 25th September last should not be set aside on the ground that there is no finding that a dispute likely to cause a breach of the peace existed ; and that there was no evidence upon which the order could be supported. The former of the two grounds was not pressed before us in argument, the argument being directed to the latter ground, namely, that the order was made without any evidence of the fact which would justify the Magistrate in making the order which he did under sec. 147, Cr. P. C.

2. The judgment was not given at once, because our attention was drawn to a case by the learned vakil who appeared to show cause against the rule, which, the said, established the proposition that an order could be made under sec. 145, on the written statement filed by the parties without any evidence of any sort whatever. We referred to the case and we find that it is not on all fours with the present case, because in it an order was made, it is true, on the written statement of one of the parties, but it was made on the express admission of the other party; and therefore it is not an authority for the proposition that an order can be made without evidence where the party, who in the ordinary course of things, would oppose the order, does not expressly admit the allegation made by the other party.

3. In the present case the Magistrate appears to have had before him no evidence of any of the facts which would entitle him to make the order is In question. The order in question in fact made under sec. 147, but it is provided

that the procedure to be followed in making this order is that which is laid down in sec. 145. In our view the Magistrate ought to have had some evidence of the proof of the allegation contained in the written statement, and that he ought not to have made the order without having some evidence to that effect before him.

4. On that ground we set aside the order and direct that the Magistrate do proceed according to law. The rule is made absolute.