

AIR 1964 Guw 105

Gauhati High Court

Case No: None

Ghutu Akanda

APPELLANT

Vs

Somser Ali and Others

RESPONDENT

Date of Decision: Aug. 14, 1963**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 145, 540

Citation: AIR 1964 Guw 105**Hon'ble Judges:** S.K. Dutta, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

S.K. Dutta, J.

This is a reference made by the Additional Sessions Judge, Lower Assam Division Gauhati, in connection with an order passed in a proceeding u/s 145 of the Code of Criminal Procedure by Shri S. C. Barua, Magistrate, 1st Class, Barpeta.

2. The learned Magistrate drew up the said proceeding at the instance of the first party and came to a finding that the second party was in possession of the disputed land. In doing so, he summoned and examined a Lot Mandal as a Court witness. The learned Additional Sessions Judge submits that u/s 145 of the Code of Criminal Procedure, as it stands today, no Court witness can be summoned. Mr. Bardalai, the learned Counsel appearing on behalf of the petitioner, submits that there are two provisions under which a witness can be examined in a proceeding u/s 145, Criminal Procedure Code, namely, under the first proviso to Sub-S.(4) of the said section the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in, and, secondly, under Sub-section (9) of the said section, the Magistrate may at any stage summon a witness on an application of either party. Mr. Bardalai contends that except these two kinds of witnesses, no other witness can be examined. I, however, do not find any force in this contention. Section 540 of the Code of Criminal Procedure enables any Court at any

stage of any enquiry or other proceedings under the Code to do three things, namely(1) to summon any person as a witness (2) to examine any person who is in attendance though not summoned, or 3 to recall and re-examine any person already examined. In view of this provision, there is no bar for a Court, to summon some person who in his opinion may give valuable evidence as a Court witness. This view gets support from a decision of the Rajasthan High Court, in the case of [Bahori Vs. Ghure and Another](#), as well as a decision of the Allahabad High Court, in the case of [Mirza Mohd. Aziz Vs. Safdar Husain and Another](#), In short, there is no bar for a Magistrate to examine a Court witness u/s 540 of the Code of Criminal Procedure even in a proceeding u/s 145.

In this view of the matter, the reference is rejected.