

(1904) 04 CAL CK 0003

Calcutta High Court

Case No: Rev. No. 203 of 1904

Janu Manjhi

APPELLANT

Vs

Maniruddin

RESPONDENT

Date of Decision: April 8, 1904

Judgement

1. In the case a rule was issued calling upon the Magistrate of the District as also upon the opposite party to show cause why the order under sec. 145, Cr. P. C., complained against should not be set aside on the ground, first, that a copy of the order, as contemplated by cl. (3) of the said section, was not published in some conspicuous place at or near the subject of dispute, and, secondly, that upon the order of the Magistrate instituting the proceeding it appears that there was no imminent danger of a breach of the peace. It is admitted by the learned Magistrate that there was no compliance with the provisions of cl. (3) of sec. 145. But it has been contended by Mr. Roy on behalf of the opposite party that that non-compliance does not affect the jurisdiction of the Court, and that therefore this Court in the exercise of its revisional jurisdiction, or of its jurisdiction under the Charter cannot interfere with the order of the Magistrate.

2. We are not prepared to accept that view. The provisions in cl. (3) of sec. 145 appear to us to be of a mandatory character. The Legislature for certain obvious reasons, to which we do not think it necessary to refer, provides that service of notice of the order should not only be made upon the person actually concerned, but that "at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute." To hold that this should be done in certain cases and may not be done in other cases would make the provisions of the section practically useless. It does not seem to us that the Courts are in a position, in the face of the mandatory character of those provisions to say in what class of cases the provisions should be complied with and in what class of cases they may be dispensed with. We think that the failure to publish a copy of the order in accordance with the provisions of the latter part of cl. (3) to sec. 145 affects the jurisdiction of the Court below and that the order complained of should be set aside

on that ground.

3. It also appears to us that the proceeding drawn up by the Magistrate does not show that- there was such an imminent danger of a breach of the peace as would justify proceedings under sec. 145. Nor is that defect remedied by the statement in the Police report which also indicates a future probability, and not an immediate danger of a breach of the peace. Upon these grounds we are of opinion that the rule should be made absolute ; and we accordingly make it absolute.