

## Nirpendra Chandra Sen Vs Sasadhar Saha and Others

**Court:** Calcutta High Court

**Date of Decision:** July 2, 1929

**Citation:** AIR 1929 Cal 805

### Judgement

1. This Rule is directed against an order of a Deputy Magistrate of Madaripur u/s 145, Criminal P.C., declaring the opposite party to be in

possession of certain disputed land.

2. It is contended on behalf of the petitioner that the order complained of was without jurisdiction, inasmuch as certain additional lands had been

included in the proceedings on which that order was based, not in the exercise of the Deputy Magistrate's own discretion, but in mechanical

compliance with a direction given by the District Magistrate.

3. It is further contended that fresh proceedings should have been drawn up when the additional lands were included, and that the proceedings as

finally framed were defective.

4. What happened was this: On 23rd March 1928, an Assistant Sub-Inspector of Matbarcharh police station submitted a report to the Magistrate

to the effect that the petitioner was in possession of the whole of the land in question, that the opposite party were, however, putting forward a

claim to be in possession thereof, and that, in order to support their claim, the opposite party had on 21st March 1928 forcibly dug a ditch, planted

some plantain trees and erected a hut on the disputed land. On receipt of this report, the Magistrate called for a further report from the officer-in-

charge, and on 1st April 1928, the Sub-Inspector reported that some more huts had been erected and some more plantain trees planted on the

disputed land, and at the same time submitted a map from which it appeared that the land on which the ditch had been dug, the plantain trees

planted and the huts erected, only formed a small portion of the land actually in dispute. The Sub-Inspector's recommendation was therefore that

Section 145 proceedings should be started in respect of the portion of the land on which the huts etc., stood, and that a Section 144 notice should

be issued on the opposite party in respect of the rest of the disputed land, whereas the Assistant Sub-Inspector's recommendation had been that a

Section 144 notice should be issued on the opposite party in respect of the whole of the disputed land.

5. Acting on the recommendations of the Sub-Inspector, the Magistrate on 3rd April 1928, drew up Section 145 proceedings in respect of the

land on which the huts etc., stood, and issued a Section 144 notice in respect of the rest of the disputed land.

6. The opposite party then moved the District Magistrate against the order u/s 144, with the result that that order was set aside.

7. In setting aside the order the District Magistrate remarked that:

the reports do not disclose such imminence of a breach of the peace as would justify an order u/s 144, Criminal P.C., in respect at one portion of

the disputed land, and a proceeding u/s 145, Criminal P.C., in respect of the rest,

and concluded by saying that:

the Magistrate should include the whole of the disputed land in the proceeding u/s 145, Criminal P.C. and attach the land if such action is called for

by the circumstances of the case.

8. The above order was dated 21st April 1928, and on receipt of a copy thereof, the Magistrate, by his order of 4th May 1928, directed that:

the land for which an injunction u/s 144, Criminal P.C. was passed, should be included in the proceedings u/s 145, Criminal P.C.

9. This order was given effect to by amending the proceedings that had already been drawn up in respect of the portion of the land on which the

huts etc., stood, and by issuing fresh notices on the parties.

10. The enquiry was then proceeded with without any further objection from either side, with the result that the opposite party were ultimately

declared to be in possession of the whole of the disputed land, i.e., the whole of the land covered by the amended proceedings.

11. The District Magistrate was moved against the said order, but he declined to interfere, holding that the Magistrate had drawn up proceedings

on being satisfied from the reports of the local police that there was a likelihood of a breach of the peace about the land in dispute and further

stating that the District Magistrate had given no direction that proceedings u/s 145, Criminal P.C. should be drawn up, even if the Magistrate

thought that there was no fear of a breach of the peace, but had merely said that it would be better to draw up proceedings under that section in

respect of the whole of the disputed land.

12. Coming now to the questions at issue before us, it appears to be settled law that District Magistrate has no authority in law to direct a

subordinate Magistrate to institute proceedings u/s 145, Criminal P.C. : whether such proceedings should or should not be taken is entirely a

matter within the Magistrate's own discretion. The question then arises whether, in the present case, the Magistrate amended the proceedings in

the exercise of his own discretion, or because he regarded the District Magistrate's order of 21st April 1928, as a direction for the inclusion of the

whole of the disputed land, which left no room for the exercise of his own discretion in the matter. The terms in which the District Magistrate's

order is expressed go against this view, inasmuch as the concluding words are:

The Magistrate should include the whole of the disputed....if such action is called for by the circumstances of the case.

13. The order was clearly intended to leave the Magistrate free to exercise his own discretion in the matter, but the question is whether the

Magistrate did or did not actually exercise that discretion.

14. Certain expressions used by the Magistrate in the course of the enquiry, suggest the inference that he did not use his own discretion in the

matter, but considered himself bound to act under what he regarded as a discretion given by his official superior, the District Magistrate. For

example, in para. 1 of his final order, he says that the District Magistrate directed that a proceeding u/s 145, Criminal P.C. should be drawn up for

the entire disputed land, and that the whole of the land was accordingly, included in the proceedings.

15. On the other hand, it is clear from what has been stated above, that the Magistrate had ample materials before him, (viz., the Police Reports of

23rd March and 1st April 1928), on which Section 145 proceedings in respect of the whole of the land in question might properly be based.

Those reports were, it is true, in favour of the petitioner, but that is really beside the question. They disclosed the existence of a dispute likely to

cause a breach of the peace concerning the whole of the land covered by the amended proceedings, and they therefore formed an adequate basis

for these proceedings. The proceedings, both as originally framed and as subsequently amended, referred to the police report and stated that the

Magistrate was satisfied from those reports that a dispute likely to cause a breach of the peace existed between the parties: the amendment merely

related to the subject matter of the dispute and did not in any way affect the real basis of the proceedings. In view of those circumstances,--and

specially in view of the fact that the Magistrate had ample materials before him on which to base the amended proceedings, --we do not think we

would be justified in inferring from a few unguarded expressions used by the Magistrate in the course of the inquiry, that he failed to exercise the

discretion vested in him by law,--a discretion that had been expressly left entirely unfettered by the District Magistrate, in his order in the connected

Section 144 proceedings.

16. In coming to the conclusion we are fortified by the views expressed by a Bench of this Court in the case of Kedarnath Sikdar and Others Vs.

Bijoy Mandal and Others, in which a distinction was drawn between cases in which the Magistrate had sufficient materials before him on which to

base proceedings u/s 145, Criminal P.C. and cases like that of Kailash Chandra Pal v. Kunja Behari Poddar [1879] 24 Cal. 391 in which the

Magistrate had no such materials before him, and based his proceedings entirely on the order of the District Magistrate.

17. As regards the second point raised on behalf of the petitioner, viz., that the amended proceedings are defective, and that fresh proceedings

should have been drawn, we do not think there is much force in this, especially as the question has been raised at such a very later stage. The

amended proceedings are to all intents and purposes fresh proceedings, and although the terms in which they are couched leave a good deal to be

desired, there can be no doubt that they were perfectly well understood by the parties concerned, and that the defects, such as they are, did not

make any difficulties, or cause any embarrassment to any one, in the course of the enquiry.

18. For the above reasons, we are of opinion that the application should be rejected, and the Rule discharged.