

(1910) 12 CAL CK 0023

Calcutta High Court

Case No: Rev. No. 1110 of 1910

Kalananda Singh and others

APPELLANT

Vs

Rameshwar Singh and others

RESPONDENT

Date of Decision: Dec. 2, 1910

Judgement

1. This was a rule calling upon the District Magistrate of Purneah and on the Opposite Party to show cause why the proceedings under sec. 147, Cr. P. C. should not be quashed, or why such other order should not be made as to this Court may seem fit on the ground that there had been no information and no evidence or allegation of any likelihood of a breach of the peace after the arbitration proceeding. It appears to us to be obvious Orestes face of these proceedings that there was without jurisdiction. To begin with the ground on which the rule was issued is clearly established. There has been no allegation of any likelihood of a breach of the peace after the arbitration proceedings before the Commissioner ceased. The document, Ex. A., by which the proceedings are said to have been revived is a document which speaks for itself. It is not a proceeding and it does not state that there is any likelihood of a breach of the peace. Then we have an order of the Magistrate, who had seizin of the case, dated the 10th January 1910, which is clearly in terms an order passed under sec. 145, sub-cl. (5) of the Code of Criminal Procedure. The fact that he omitted to withdraw the attachment is an error on his part, but it does not alter the effect of his order. That order is, " further proceedings are unnecessary and they are therefore stayed." That alone ousted the jurisdiction of the Magistrate to continue the proceedings. But there are further and much graver objections to carrying on the proceedings of 1908 or of 1909. The law laid down in para. 4 of sec. 145, Cr. P. C, which covers the procedure under sec. 147 is clear that the decision of the Magistrate can only relate to whether any or each of the parties was at the date of the original proceeding in such possession of the said subject or right. Now, in December 1910, to decide who had a particular right in the middle of 1908, appears to us to be a futile proceeding. It would not in any way serve to settle the dispute nor could it be considered to have a prospective effect so as to compel the parties to

go to the Civil Court. The proviso to sec. 147 also makes these proceedings bad "" provided section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been exercised within three months next before the institution of the enquiry." There is no fresh enquiry instituted in May 1910, and it is admitted that the boats which were used in the exercise of the right have been lying high and dry for nearly two years. Then there is the question of the jurisdiction of the Magistrate in all cases under Chap. 12. That jurisdiction is solely based on the imminence of a breach of the peace. He must be satisfied that a dispute exists which is likely to lead to a breach of the peace and he must issue proceedings stating the information and the grounds on which he is so satisfied. Now the information and the grounds on which he was satisfied in 1908 or in 1909, are not the same as the grounds upon which he at present apprehends a breach of the peace. Ex. A distinctly says that the present ground of these proceedings is that the arbitration proceedings before the Commissioner have proved ineffectual. When previous proceedings were issued there was no such arbitration before the Commissioner. Therefore there are at least four solid grounds to show that these proceedings are without jurisdiction, and this is not a mere technical matter, but is, as we have pointed out, one of the greatest importance both to the Crown and to the parties. What the Crown wants and what the parties want is a decision as to their present rights and a decision which will be effectual to prevent a breach of the peace. Any finding on the proceedings of 1908 or of 1909 would have no effect whatever on this necessary question.

2. Then, again, there is no possible hardship to the parties in calling upon the Magistrate to put his proceedings in order. He can issue a proper proceeding to-morrow if he finds that there is a dispute now existing which is likely to cause a breach of the peace, and he can give his reasons those which originally existed and which may have continued to exist and he can add the new reasons which have been introduced in this paper marked Ex. A. But they must be reasons which do exist and it must not be assumed that the causes which existed in 1908 or in 1909 still continue to exist. It must be clearly stated what causes exist at present. When such a proceeding is drawn up and the parties are called upon to show cause on such a proceeding, the matter can no doubt be very quickly settled and in the end public time and the interest of the parties will have been conserved. But upon the present proceedings it is perfectly clear that they are without jurisdiction and they must be discharged. There must be a direction to the Magistrate of the District to have proper proceedings framed on the existing state of facts.