

In Re: Nathu Mal

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SooperKanoon Citation : sooperkanoon.com/449365

Court : Allahabad

Decided On : Mar-18-1902

Reported in : (1902)ILR24All315

Judge : John Stanley, C.J.

Appellant : In Re: Nathu Mal

Judgement :

John Stanley, C.J.

1. A rule in this case was issued, calling upon the Magistrate to show cause why his order of the 21st of January, 1902, passed under Section 145 of the Code of Criminal Procedure, should not be set aside, on the ground that the same was passed without hearing the evidence of any of the witnesses who were produced on behalf of the second party, Lala Nathu Mal, and such other order passed as the Court might think fit. The rule was issued by me under a misapprehension as to the facts. I understood from a statement of the learned vakil who made the application that none of the witnesses who were called on behalf of the second party had been examined. It, however, now transpires that no less than ten witnesses were examined on his behalf. It appears that in addition to these ten witnesses summonses had been issued for the attendance of 21 other witnesses, and that none of these last-mentioned witnesses were examined by the Magistrate, inasmuch as he believed that the evidence which was being produced by the second party was worthless, and that it was only a waste of public time to

examine further witnesses. In his explanation the Magistrate has stated to this effect, and shown that the order which he passed was not made until he had examined a great number of witnesses, and had satisfied himself as to the propriety of the order. Under these circumstances it is clear that the Magistrate did not act without jurisdiction. He considered the case and heard as many as ten witnesses on behalf of the second party and five on behalf of the first party. The present application in revision is made under the provisions of Section 15 of the Charter Act. Under the Code of 1898 the revisional powers of the Court in proceedings under Chapter XII were withdrawn, and therefore, as it seems to me, the Court is not empowered to exercise revisional jurisdiction in such proceedings unless in cases where the Magistrate has acted without jurisdiction. According to the present state of the law, since the passing of the Act of 1898, the power of revision to be exercised by the Court is limited to matters of jurisdiction, that is, to cases in which it is found that the Magistrate taking proceedings under Chapter XII has acted without jurisdiction. If an order purporting to be made under Section 145 is made without jurisdiction, there is no doubt this Court can exercise its powers under Section 15 of the Charter Act; but that is not the present case. Here the Magistrate acted within his powers, and if anything has been done by him to which objection can be taken, it was at the most an irregularity, and this Court is precluded from interfering by the express provisions of the Act of 1898. I find that this was so laid down in a case decided by a Bench of the High Court of Calcutta, consisting of Mr. Justice Prinsep and Mr. Justice Welkins. That is the case of *Doulat Koer v. Rameswari Koeri* (1890) I.L.R. 26 Calc. 625. It appears to me that the law is there correctly laid down, and that the High Court cannot exercise revisional powers in proceedings under Chapter XII unless in a case where the Magistrate has acted without jurisdiction. For these reasons the rule must be discharged. I accordingly discharge it.