

Dhanput Singh Vs. Chatterput Singh

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Court : Kolkata

Decided On : Jan-19-1893

Reported in : (1893)ILR20Cal513

Judge : Prinsep and ;Ghose, JJ.

Appellant : Dhanput Singh

Respondent : Chatterput Singh

Judgement :

Prinsep and Ghose, JJ.

1. The matter on which this rule has been granted relates to proceedings taken under Section 145, Code of Criminal Procedure, by the Magistrate of Purneah on notice given to the parties. Written statements have been put in, and the case was transferred by the order of the District Magistrate, under Section 528, from the Sub-divisional Magistrate of Arrareah to a Magistrate holding his Court in Purneah, the head-quarters of the district. The trial of the case has not yet commenced. The rule has been granted on two grounds taken on behalf of Rai Dhanput Singh, one of the parties to the case; first, that the Magistrate does not state the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning certain lands within his jurisdiction in setting out the facts, and his belief in them upon which he considers such breach of the peace as imminent; further, that he does not set out that such is imminent in regard to any specified

property; and, secondly, that he transferred the case to the Magistrate sitting at Purneah without notice to the parties so as to give them an opportunity of stating their objections to such a transfer.

2. In regard to the first point, we have heard learned Counsel for both parties to these proceedings at considerable length, and have been referred to numerous cases in the reports expressing the opinions of various Benches in regard to the proper institution of proceedings under Section 145, and similar provisions of the Codes of Criminal Procedure of 1861 and 1872 now repealed. The substance of the decisions cited to us seems to be that the Magistrate is bound to satisfy himself on grounds which are reasonable that a breach of the peace is imminent in regard to properties of the description specified by Section 145, that a dispute likely to cause a breach of the peace exists concerning them, and that the grounds stated by him must be such as to satisfy a Court of Revision before which such case may be brought by any of the parties concerned.

3. In the case before us it is objected in the first instance that no proceeding was drawn up by the Magistrate as contemplated by the law. We find, however, that there was an order passed by the Magistrate which, if not in form, was at least in substance sufficient to comply with the requirements of the law, and that on this notice was served in the first instance on the agents of the parties now before us, and on their representation, on the principals themselves to appear and put in written statements such as they have now put in; we, therefore, think that the proceedings are valid in respect to the manner of their institution.

4. It appears that in consequence of several cases before him relating to various acts amounting to breaches of the peace between the partizans of the parties now before us, the Magistrate directed the Police to enquire whether there were sufficient grounds for proceeding under Section 145, and that thereupon a report was made suggesting that, for the reasons stated, such proceedings were necessary. If, therefore, the Police report which the Magistrate has made the foundation of the proceedings instituted under Section 145 does sufficiently set out substantial reasons for believing that a dispute likely to induce a breach of the peace between the parties now before us relating to certain lands exists, there are

no valid grounds for impugning the regularity of the proceedings under which the matters contemplated by Section 145 are now about to be tried. The report of the Police officer sets out a statement made by the agent of Baboo Chatterput Singh that he is prepared to resist any attempt made by Rai Dhanput Singh to obtain possession of certain lands. A statement was also taken by the Police officer, and forms portion of the report from the agent of Rai Dhanput Singh, the petitioner before us, which shows good reason to suppose that Rai Dhanput Singh was prepared to assert his possession of certain lands either held by Chatterput Singh or claimed by Chatterput Singh as in his possession. There are also statements of various Police officers that disputes are going on between the parties relating to lands within their respective jurisdictions and, amongst these, we may refer to the statement of one Police officer who alleges that there has already been a breach of the peace and a case in Court, and that in his opinion there is likely to be a repetition of this disturbance unless the Magistrate should interpose. For the purposes of notice to the parties, we think it sufficient for the Magistrate to cite, as the ground of his proceeding, the Police report on which he is satisfied that a dispute within the terms of Section 145 does exist. It is open to the parties if they dispute the necessity for such proceedings either within the terms of the last clause of Section 145 to show before the Magistrate that no such dispute exists or has existed or, if they are so advised, to move the Court of Revision that the Magistrate has proceeded on grounds which are not reasonable or which cannot be held to be sufficient to satisfy him that such a dispute exists. So far as concerns this Court as a Court of Revision, we think that the proceedings of the Magistrate sufficiently fulfil the requirements of the law.

5. It is next objected that the proceedings of the Magistrate are indefinite so far as describing the particular lands concerning which the dispute between the parties exists. We observe that, in the first instance, the Magistrate specifies this land as estate Purwaha, and that on receipt of the written statement of the parties he has narrowed the subject of his enquiry to the possession of certain specified properties which, it is admitted before us, all form portions of estate Purwaha. There cannot, in our opinion, be any objection to such a proceeding of the Magistrate in thus limiting the subject-matter of his enquiry so as to confine it only to lands which the written statement of the parties have satisfied him were the sole

matters in dispute. We think, therefore, that we should not be justified as a Court of Revision in obstructing the course of the proceedings so instituted by the Magistrate, having the object to maintain the peace and to settle the disputes between the parties, rival zemindars, in such a manner as, at least temporarily, to quiet the tenantry of the particular lands. It is open to either of the parties, if so advised, to show to the Magistrate that no dispute likely to induce a breach of the peace exists or has existed regarding any of these lands.

6. The second point on which the rule was granted relates to the order of the District Magistrate transferring the proceedings from the Sub-divisional Court of Arrareah to that of the Magistrate at Purneah without notice to the petitioner. It has been stated on behalf of Chatterput Singh that the application for transfer was made by consent of the agents of Dhanput Singh or, at least, after notice to them that such application was about to be made, and without any objection. This has been contradicted, and we may take it, therefore, that there has been a misunderstanding, or that any consent that may have been given has been given without proper authority. However that may be, we think it unnecessary to interfere directly with the order passed by the District Magistrate, because it is still open to the District Magistrate to reconsider his order on any objection made by the petitioner, and we have no doubt that on such objection being made the District Magistrate will give due consideration, and will thereupon make such orders as may be best calculated to ensure an early decision of the matters in dispute to the convenience of the parties and in the interests of justice. The law leaves it open to the Magistrate to deal with this matter and to direct the trial to be held either at the Purneah or the Arrareah Court as he may think proper on further consideration of the matter as represented by the parties.

7. For these reasons we think that the rule should be discharged.