

Anu Sheikh Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/858771

Court : Kolkata

Decided On : May-16-1910

Reported in : (1910)ILR37Cal812

Judge : Harington and ;Teunon, JJ.

Appellant : Anu Sheikh

Respondent : Emperor

Disposition : Application dismissed

Judgement :

Harington and Teunon, JJ.

1. The first point taken is that this proceeding, having begun before one Magistrate and continued and ended by another, is without jurisdiction, because the 'second Magistrate had no jurisdiction to make the order. But Section 350 of the Code of Criminal Procedure provides: 'whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has, and who exercises, such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by 'his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the enquiry or trial.' Now, it is argued that section does not apply. But

that section is in its terms wide enough to cover every trial or inquiry under the Code of Criminal Procedure, and the proceeding under Section 145 is, we think, an inquiry, because in it the Magistrate's duty is to enquire who is in possession of the disputed area. We think, therefore, that the terms of Section 350 apply wherever a Magistrate has ceased to exercise jurisdiction therein. Now, in the present case the Magistrate who began ceased to exercise jurisdiction because he was transferred, that is to say his office, qua the exercise of jurisdiction in this particular case, was vacated and the case was transferred to the file of another Magistrate, who then became the successor of the Magistrate who had vacated the office, in the sense that he exercised the jurisdiction over the case which had been exercised by the Magistrate who had begun the case. We think, therefore, that the second Magistrate came within Section 350 of the Criminal Procedure Code.

2. Then, with regard to the other point, the Magistrate has found that the other party has been in possession for two months, and that brings him precisely within the proviso of Clause (4) of Section 145 of the Criminal Procedure Code. We cannot, therefore, say that the order was made without jurisdiction. For these reasons, the order must stand. This application is accordingly refused.