

A. I. R. 1917 Lahore 35 (1)

CHEVIS, J.

Nur Bakhsh and others—Petitioners,

v.

Emperor—Respondent.

Criminal Revn. No. 100 of 1917, decided on 27th April, 1917, from the Order of Dist. Magte., Ferozopore, dated 6th December, 1916.

Criminal Procedure Code (5 of 1898), S. 145—Omission to pass preliminary order or to serve it is not fatal—Requirements are satisfied when matter is explained to parties on appearance.

The omission to frame an order in writing as required by S. 145 (1) of the Criminal Procedure Code or to serve a copy of the order on the parties as required by S. 145 (3) does not necessarily invalidate proceedings under S. 145. A.I.R. (1914) Lah. 295; A. I. R. (1917) Lah. 35, foll and 32 Cal. 552, not foll.

Where, therefore, the parties appeared before a Magistrate who explained matters to them fully and they evidently understood everything that was requisite.

Held, that there was no sufficient cause for interference.

Sohan Lal and Ram Rakha Mal—for Petitioners

Muhammad Iqbal—for Respondent.

Judgment.—There are two points, (1) whether the omission to frame an order in writing as required by S. 145 (1) as the initiation of proceedings, and the omission to serve a copy of the order on the parties as required by S. 145 (3) are such flaws as to necessitate this Court's setting the proceedings aside, and (2) whether the Magistrate is justified in holding that there was danger of a breach of the peace.

As to (1), *pace Banwari Lal Mukerje v. Hriday Chakravarti* (1) and other rulings, we have two clear rulings of this Court, *Muhammad Sharif v. Dhanpat Rai* (2) and *Sajad Hussain v. Nanak Chand* (3). In the present case the parties appeared before the Magistrate and he explained matters fully to them, and they evidently understood everything that was requisite.

As to (2), there is evidence. Counsel urges that witnesses do not depose that there was danger of breach of the peace. When a witness does so depose he is merely expressing his own opinion. It is for the Magistrate after hearing the evidence to form his own opinion.

(1) (1905) 32 Cal. 552.

(2) A. I. R. (1914) Lah. 295 = 23 I. C. 487.

(3) A. I. R. (1917) Lah. 35 = 39 I. C. 301.

I see no sufficient cause to interfere.
Dismissed.

R.M./R.K.

Revision rejected.

A. I. R. 1917 Lahore 35 (2)

SHADI LAL J.

Sajad Hussain and others—Petitioners.

v.

Nanak Chand and others—Respondents.

Criminal Revn. No. 2059 of 1916, decided on 24th March, 1917, from the Order of Magte., 1st Class, Ambala, dated 13th November, 1916.

(a) Criminal P. C. (5 of 1898), S. 145—Requirements and procedure under S. 145, stated.

In order to give jurisdiction to a Magistrate to take proceedings under S. 145, Criminal Procedure Code, it is essential that he should be satisfied that a dispute likely to cause a breach of the peace exists, and such dispute must refer to land or water or the boundaries thereof lying within his local jurisdiction. If such a dispute exists, the Magistrate is entitled to exercise his jurisdiction, and the first step is the recording of the initial order, the contents of which are specified in the first clause of S. 145. 33 Cal. 352, ref to. [P. 36, C. 1.]

(b) Criminal P. C. (5 of 1898), Ss. 145 and 537—Omission to draw up preliminary order is not fatal.

But the mere omission to record the preliminary order is not a fatal defect, if no prejudice has been caused thereby. A. I. R. (1914) Lah. 295 foll. 22 P. R. 1916 Cr. expl. [P. 36, C. 1.]

(c) Criminal P. C. (5 of 1898), S. 145—Property—Trees severed is not immovable property within S. 145.

Trees which have been severed from the land do not come within the purview of S. 145, sub-S. (2), and no order under S. 145 can be made with respect to them. [P. 36, C. 2.]

Muhammad Iqbal—for Petitioners.

Gokal Chand Narang for Duni Chand—for Respondents.

Judgment.—This is an application for revision of an order passed by the Magistrate under S. 145, Criminal Procedure Code, and the grounds, upon which the order is sought to be revised, are:—

1. That the Magistrate did not pass an order in writing as required by sub-S. 1 of S. 145;

2. that there was no dispute likely to cause a breach of the peace;

3. that no order could be made respecting the trees which had been cut and severed from the land.

As regards the first contention, it appears that though the Magistrate was satisfied from the information received by him that