State vs Sm. Tugla on 10 February, 1955

Equivalent citations: AIR1955ALL423, 1955CRILJ1111, AIR 1955 ALLAHABAD 423

JUDGMENT

Desai, J.

1. In proceedings under Section 145, Criminal P. C. started by the respondent herself on the allegation that she was in possession of the house in dispute and some landed property and that there was a dispute between her and Sob Nath about them which was likely to cause a breach of the peace, the Sub-Divisional Magistrate, Soraon on 6-7-1950 held that Sob Nath was in possession of the house in dispute and entitled to remain in possession until evicted in due course of law and ordered the respondent not to disturb his possession in the meantime. The propery seems to have been attached under Section 145(4). On the case being decided in favour of Sob Nath, it was released from attachment and possession was given to him by the police on 1-12-50. On 3-11-50 the respondent filed a civil suit regarding the house in dispute. She applied for a temporary injunction and the civil court on 18-11-50 issued an interim injunction that status quo should be maintained.

The order was served upon Sob Nath on 30-11-50 two days before he obtained possession from the police. On 30-1-51 Sob Nath made an application to the Sub-Divisional Magistrate, who had passed the order under Section 145(6), for prosecution, of the respondent under Section 188, I.P.C. on the allegation that she entered the house in dispute again and again in spite of the order. The application was pent by the Sub-Divisional Magistrate to the Teh-sildar for enquiry and report. He reported that she lived in the same house and that there was every likelihood of a breach of the peace and recommended proceedings under Section 107 of the Code. On receipt of the report the Sub-Divisional Magistrate filed a complaint against the respondent for the offence under Section 188, I.P.C.

2. The prosecution v examined Sob Nath, Brij Mohan, Ram Padarath and H. C. Manzur Alam. H.C. Manzur Alam deposed that he handed over possession over the house to Sob Nath on 30-11-50 under the orders of the Sub-Divisional Magistrate, that he had subsequently met the respondent and informed her of the fact and of the injunction that she should not interfere with Sob Natti's possession. The other three stated about Sob Nath's possession over the house and interference with it by the respondent after 6-7-50, Sob Nath deposed that in the month of March 1951 the respondent quarrelled with him, abused him and threw out his articles from the house and that she goes to the house and quarrels with him every eighth or tenth day.

In cross-examination he deposed that she entered into the house five or seven months after possession was delivered to him and that she frequently went to the house subsequently. There is

nothing in his deposition which would make it improper to rely upon it. Brij Mohan deposed that the respondent goes into the house and stays there after closing the door. On one occasion he heard exchange of abuses between the parties. Ram Padarath deposed that the respondent enters into the house, and threatens to live in it. He saw her visit the house ten or twelve times, but no quarrel took place in his presence. On one occasion he saw her throwing away utensils. On the first occasion she lived in the house for three or four days.

3. The respondent denied having disobeyed the order of the Sub-Divisional Magistrate. She stated that she never entered the house. She examined Ram Prasad, Shitla Din, Basdeo and Dukhi in defence. They supported her statement. When the house was under attachment during tbe pendency of the proceedings under Section 145 it was entrusted to D.W. Shitla Din. His statement that the house is still in his possession, that it is locked, that he has got the key, that nobody ever took possession of it from him, and that Sob Nath never got possession is a tissue of lies. He himself signed the report prepared by H.C. Manzur Alam about the delivery of possession to Sob Nath.

Ram Prasad is related to the respondent and no reliance can be placed on his negative evidence. He admitted that the police had taken possession of the house from Shitla Din, but added that it is in possession of nobody, is still under attachment and is locked up by the police. He is also a liar. His statement contradicts Shitla Din's and there is no doubt that both of them are telling lies. Basudeo Prasad's statement is also of a negative character. Dukhi stated that the house is locked and is still under attachment; this is also a lie. The Sub-Divi-sional Magistrate has released the house from attachment and delivered possession of it to Sob Nath.

The civil court did not attach the house, it only ordered that 'status quo' should be maintained. It did not mean that the Sub-Divisional Magistrate could not release the house from attachment or deliver possession of it to Sob Nath. It appears that the respondent in her plaint claimed that she was in possession of the house and wanted her possession to be maintained so the order of the civil court that status quo should be maintained meant nothing but that she should be left in possession. That order could be complied with only if she was in possession previously; if she was not, there was no question of her being left in possession.

4. The trial Court did not go into the question whether the respondent disobeyed the order of the Sub-Divisional Magistrate or not. I find that there was sufficient evidence to prove that she did. She was ordered not to disturb Sob Nath's possession. The possession could be disturbed in many ways; if may be disturbed by Sob Nath's being abused and threatened; or by the respondent's entering into the house or by her throwing away Sob Nath's articles kept inside the house. One of the acts of possession done by Sob Nath was to keep his goods inside the house, and it the respondent threw them away she undid the act of possession. If she quarrelled with him and abused him she certainly interfered with his peaceful possession of the house; She was forbidden to interfere with his possession in any manner. It is not necessary that she should have completely dispossessed or ousted Sob Nath before she could be held to have disobeyed the order. The slightest interference with Sob Nath's possession amounted to disobedience. (5) Sob Nath was entitled to remain in possession so long as he was not evicted in due course of law. The civil court decreed the suit of the respondent on 13-1-53. She would now be entitled to take possession of the house through Court.

But in 1951 there was no order of eviction against Sob Nath. The temporary injunction issued by the civil Court for the maintenance of status quo did not amount to his eviction in due course of law. Maintenance of status quo is quite the opposite of eviction or of delivery of possession. Maintenance of 'status" quo' means inactivity or refraining from doing any act, whereas eviction or delivery of possession means the doing of a positive act. Therefore the temporary injunction did not entitle the respondent to disturb Sob Nath's possession.

6. Section 188, I. P. C. punishes disobedience of a direction given through an order promulgated by a public servant lawfully empowered to promulgate it. If the order issued under Section 145(6) by the Sub-Divisional Magistrate on 6-7-50 was an order promulgated, it was an order promulgated by a public servant lawfully empowered to promulgate it because the Sub-Divisional Magistrate is a public servant and has got the power to pass an order under Section 145(6), Criminal P. C. I have found it proved that the respondent disobeyed the direction contained in the order. On the remaining question whether the order is an order promulgated, I have not the slightest doubt that it is.

7. The word "Promulgate" is not defined in the Code. Its meaning according to Murray's Dictionary is:

> "to make known by public declaration, to publish; especially to disseminate (some creed or belief), or to proclaim (some law, decree, tiding)."

Its meaning according to Webster's International Dictionary is:

> "to make known by open declaration, as a law, decree * * * to proclaim; to publish abroad."

The order under Section 145(6) should be in the form "It appearing to me, on the ground duly recorded that a dispute likely to induce a breach of the peace necessitated ***** that the claim of actual possession by the said.....is true; I do decide and declare that he is in possession of the said .....and entitled to retain such possession until ousted by decrees of law and do strictly forbid all disturbance of possession in the meantime."

See Form No, XXII, Schedule V of the Code. The order strictly forbids all disturbance of possession of the person declared to be in possession. It is addressed to the public at large and not to the parties actually before the Court. It is to be obeyed by every one, whether a party to the proceedings or not. Of course, a person who does not know about the order cannot be convicted for disobeying it. Section 188, I. P. C. punishes disobedience of an order by a person if he knows that the order was promulgated. No person who does not know about the promulgation of the order can be punished for disobedience of it. But it should be noted that when he is not punished it is because he commits no offence within the meaning of Section 188, I.P.C. (as he is ignorant of the order) and not because he was not bound by the order and was not required to obey it.

It has been held in -- 'Jainath pati v. Ramlakhan Prasad', AIR 1929 Pat 505 (A) and -- 'Satya Charan Dei v. Emperor', AIR 1930 Gal 63 (B) that such an order binds the whole world. The order is pronounced in open Court. It is not required to be served upon any one, not even the parties against whom it is pronounced. It takes effect as soon as it is passed in open Court. These (acts make it an, order promulgated. A decree or a temporary inr junction issued by a civil Court in a private dispute between a party and party also is issued in open Court but is not addressed to the public at large. Since a decree or injunction binds only the party actually before the Court, it is to be brought only to the notice of the party and does not require to be published abroad or proclaimed. In other words it is not required to be promulgated.

The public may know about it because it is issued in open Court, but it would not thereby become a decree or order promulgated. On the other hand an order under Section 145(8) is not only issued in open Court but also addressed to the public and is meant to be obeyed by it. It is, therefore, proclaimed or published abroad or made known to the public by open declaration. According to the meanings mentioned above, it is an order promulgated. Promulgation does not require publication in newspapers or by posters. If an order is made known by open declaration, it amounts to its being promulgated, whatever be the manner of declaration.

8. An order passed under Sections 133 or 144 of the Code is to be served, if practicable, on the person against whom it is made as if it were a summons, If it cannot be so served, it should be notified by proclamation to the public in such manner as the State Government may prescribe and a copy of it should be stuck up at a prominent place (see Section 134). In whatever manner the order issued under Section 144 is served, it is an order promulgated and its disobedience is punishable under Section 188; there is no doubt about this. Even if it is served like a summons there is no. reason why an order issued under Section 145(6) should not be held to be an order promulgated.

An order issued under Section 133 or Section 140 is an order promulgated because its disobedience is punishable under Section 188, I. P. C. as laid down in Sections 136 and 140 of the Code. When a conditional order is made absolute, the magistrate has to give a notice of it to the person against whom it is made and he must comply with it. Though only a notice of the order, is required to be given and that too only to the person against whom it is made, it is treated as an order promulgated. It means that no particular kind of publication is required for promulgation.

9. There is not a single authority holding that an order under Section 145(6) is not an order promulgated and that its disobedience is not punishable under Section 188, I. P. C. On the other hand there are decisions recognising that disobedience of it is punishable under Section 188, I.P.C. for example --'Ambika Thakur v. Emperor', AIR 1939 Pat 611 (C), AIR 1930 Gal 63 (B), -- 'Jaswant v. State', AIR 1951 All 828, (D) and -- 'Emperor v. Zahir-us-Sayed Ali', AIR 1934 Nag 114 (E). In none of these cases was there any discussion about the meaning of the word 'promulgate'. The reason is that it was never contended that such an order was not an order promulgated. There can be no greater 'proof of the correctness of the finding that such an order, is an order promulgated than the fact that not only is there not a single authority to the contrary but also its correctness has never been doubted so far.

Such orders are issued very frequently and their disobedience cannot be said to be rare. The Code of Criminal Procedure and the Indian Penal Code have been in force for more than fifty years. If in all this period of fifty years, it has never been contended that an order under Section 145(6) is not an order promulgated it means that such a contention cannot be advanced with any show of reason. There is a presumption that what has never been done cannot legally be done: Ashurst J. in -- 'Russell v. County of Devon', (1788} 2 TR 667 (F).

10. Under Section 36(4), Legal Practitioners Act a court may by a general or special order exclude from the precincts of the Court any person whose name is included in the list of touts. No particular manner of publication of the order is prescribed. In -- 'Chhotu v. King Emperor', AIR 1950 Nag 158 (G) such an order was held to be an order promulgated. The reason given was that the proceedings under the Legal Practitioners Act are quasi criminal. The proceedings under Section 145 are also quasi criminal. But really whether an order is an order promulgated or not does not depend upon whether it is passed in criminal proceedings or civil proceedings. Every order passed in criminal proceedings is not an order promulgated.

11. In -- 'In re Chandra Kanta De', 6 Cal 445 (H), Garth C. J. with concurrence of Mcleod J. held that disobedience of an injunction issued by a civil Court is not an offence under Section 188, I. P. C. and that Section 188 applies to orders made by public functionaries for public purposes and not to an order made in a civil suit between a party and a party. The same view was -taken in --'Quinn v. Keshab Chandra Muldierjee', AIR 1949 Cal 349 (I). Similarly, an order made under R. 15 of the Kumaun Nayabad Rules was held in --'Bishen Datt v. Emperor', AIR 1948 All 50 (J) not to be an order promulgated. It was enough for the purposes of the cases that the particular orders were not orders promulgated, and the Courts were not required to give an exhaustive list of orders promulgated. They were not called upon to, and did not, decide whether an order under Section 145(6) is an order promulgated.

The only case in which the meaning of the word came in for some discussion was -- 'Emperor v. Raghunath Vinayak', AIR 1925 All 165 (K). There an oral order was given by a sub-inspector of police to stop music before a mosque and it was disobeyed. When the accused were prosecuted they contended that there must be a written or printed order before it could be held to be promulgated. Their contention was repelled. It was held that the word "promulgate" indicates that there must be some form of publication. This does not mean that there must be publication through newspapers or posters or leaflets. When an order is pronounced in open court it is made public, nothing more need be done to publish it.

12. An order under Section 145(6) is not capable of execution. The Code of Civil Procedure provides for execution of injunctions, but the Code of Criminal Procedure does not provide for execution of an order under Section 145(6). A disobedience of the order can be punished only under Section 188, I. P. C. There is no other provision under which it can be punished. If the other party commits a criminal trespass, he may be punished under Section 447 or 448, I. P. C., but every disturbance of possession does not amount to criminal. trespass and is not punishable as such. If an order could not be enforced and its disobedience could not be punished, it would have been futile for the legislature to provide for the passing of it. The interpretation placed on the order by the trial Court

would emasculate Section 145 (6) completely. It would have been no use holding an enquiry if it were to result in the passing of an order which could not be enforced either by execution or by punishment for disobedience.

We must place such an interpretation upon Section .145 (6) as not to render it nugatory and not to defeat the object behind the provisions of Section 145. Merely declaring a party to be in possession would not prevent a breach of the peace; the parties themselves know which of them is in possession and do not stand in need of any "declaration from a court in order to know it. Therefore the provision about declaration in Section 145(6) is itself of no assistance in preserving the peace; what is of assistance is the prohibition of all disturbance of the possession. If that prohibition were not to be followed by a punitive action in case of disobedience, the prohibition would be in vain and the order would not have removed in the slightest degree the apprehension of a breach of the peace. If there is any utility behind the provisions of Section 145, it lies in the fact that disobedience of an order under Section 145 (6) is punishable, i.e., punishable under Section 188, I.P.C.

That proceedings can be taken under Section 107, Criminal P. C. is no reply to this argument. The legislature itself has provided for the passing of such an order as a substitute for, or in addition to, an order under Section 118. An enquiry under Section 145, is simpler than an enquiry under Section 107 of the Code. A person can be bound down under Section 107 only if he is likely to commit a breach of the peace or do any wrongful act likely to occasion a breach of the peace, whereas an order under Section 145(6) can be passed without deciding which party is likely to commit a breach of the peace or do a wrongful act." It may not, therefore, be feasible to start proceedings under Section 107 in every case of an apprehension of a breach of the peace.

13. The learned Magistrate has relied upon AIR 1948 All 50 (J) and AIR 1949 Cal 349 (I). Neither of them is applicable to the facts of the present case. I do not understand how he observed that Section 188, I. P. C. does not deal with disobedience of an order passed in a civil or criminal proceedings between two parties; neither of the cases relied upon by him lays down that an order passed in a criminal proceeding between two parties is not an order promulgated. Because there are particular men arrayed as parties to a case, it cannot be said that the case is one between a party and a party. Even though individuals are parties to a criminal proceeding the order passed in it may bind the public, for example an order passed under Section 145(6). An order passed in proceedings under Section 133 is an order promulgated though the proceedings are between a party and a party.

14. It cannot be doubted that the disobedience by the respondent of the order under Section 145(6) not only tended to cause but actually caused annoyance or a risk of annoyance to Sob Nath. She was, therefore, clearly guilty under Section 188, I. P. C. The ap-real should, therefore, be allowed and she should be convicted.

Mehrotra, J.

15. This appeal has been filed by the State against an order of acquittal passed by a. Magistrate, 1st Class, Allahabad, acquitting Smt. Tugla under Section 188, Indian Penal Code.

16. Srimati Tugla was prosecuted under Section 188, I. P. C. on a complaint filed by S.D.M. Soraon, district Allahabad, on 2-6-1951, The case against Srimati Tugla is that on 6-7-1950 Sri R.K. Chatur-vedi, S. D. M., Soraon, passed an order under Section 145 (6), Criminal P. C. in case No. 100 of 1949 Srimati Tugla v. Ram Anand and others under which it was declared that Ram Anand and his son Sobh Nath were entitled to possession over the disputed house and that Srimati Tugla was forbidden from interfering with the possession of Ram Anand and others until ejected from the house by a competent court.

17. On 304-1951 Sobh Nath, son of Ram Anand, made an application to the Sub-divisional Officer, Soraon stating that in spite of the order passed by the Magistrate under Section 145, Criminal P. C., referred to above Srimati Tugla entered the house in dispute with her husband Basdeo and Ram Prasad again and again and uprooted the crop in the fields, owing to which he could not peacefully enjoy the disputed land. This application was sent by the Sub-divisional Officer, Soraon to the Tahsil-dar, Soraon for enquiry under Section 202, Criminal P, C. The Tahsildar reported that after an enquiry on the spot he was led to the conclusion that both the parties were aggressive and there was every likelihood of a breach of the peace any moment. He recommended action under Section 107, Criminal P. C. The complaint was then filed on 2-6-1951.

18. The Magistrate acquitted Srimati Tugla holding that the order passed by the Sub-divisional Magistrate on 6-7-1950 is not an order contemplated under Section 188, I. P. C. According to the Magistrate, Section 188, I. P. C. is confined to orders promulgated by public functionaries for public purposes & the order passed by the Magistrate under Section 145(6), Cr. P. C. was not an order promulgated by a public servant. The Magistrate relied on the cases of AIR 1948 All 50 (J); AIR 1949 Cal 349 (I) and -- 'Saroj v. Emperor', 48 Cri LJ 747 (Cal) (L). It was also held by the Magistrate on the evidence produced in the case that the disobedience, if any, caused no obstruction, annoyance or injury or risk of obstruction, annoyance or injury to Sobh Nath and others. Counsel for the State has strenuously contended that the order passed under Section 145(6), Criminal P. C. is an order contemplated by Section 188, I. P. C. Section 188, I. P. C. ready as follows-:

> Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both....."

19. The question, therefore, to be decided is whe-

ther an order passed by the Magistrate in proceed ings under Section 145, Criminal P. C. is an order pro mulgated by a public servant lawfully empowered to promulgate such order. Counsel for the State has relied on the case of AIR 1950 Nag 158 (G).

The applicant in this case was declared a tout under S, 36(4), Legal Practitioners Act. Although he was excluded from the precincts of the courts in Nagpur he on 7-10-1946 approached Lalman postman near the Bar room and asked him concerning letters addressed to one Raghunathsingh, attorney to Sri Y.P. Verma, Barrister-at-law. On this he was pro secuted under Section 188, I. P. C. for the breach of the cider under Section 36(4), Legal Practitioners Act. It was held that the proceedings under the Legal Prac titioners Act are quasi-criminal proceedings, and a person disobeying an order passed by the District Judge under Section 36(4) of the Legal Practitioners Act is liable to be punished under Section 188, Penal Code provided he is aware of the order. This case is not an authority for the proposition that an order under Section 145(6), Criminal P. C. is an order promulgated by a lawful authority within the meaning of Section 188, I. P. C.

20. The next case relied -upon by the counsel for the State is the case of AIR 1951 All 828 (D) to which one of us was a party. In this case, an Older was passed in proceedings under Section 145(6), Criminal P. C. to the effect that Niranjan Singh was in possession and prohibiting the other side from interfering with his possession. The prosecution was launched on the complaint of the Magistrate for the breach of the aforesaid order. It was, however, assumed in this case that an order passed under Section 145(6), Criminal P. C. is an order contemplated under Section 188, I, P. C. No point was raised that the ofrder under Section 145(6) was not promulgated by an authority lawfully entitled to promulgate an order. The point which is now specifically raised was, therefore, not decided in that case.

21. The cases relied upon by the court below also do not apply to the facts of the present case. In the case of AIR 1948 All 50 (J) the applicant was prosecuted under Section 188, I. P. C. for the breach of an order passed by the Deputy Commissioner in charge of Kumaun Division in the course of proceedings under R. 15 of the Kumaun Nayabad Rules directing the two applicants to demolish and remove a cowshed which they had built on certain 'benap' land. It was held by a single Judge or this Court that orders contemplated by section 188, I. P. C. are orders made by public functionaries for the public interest. It was observed in this case that an order promulgated by a public servant cannot refer to an order made by a public servant in the course of a civil proceeding between two patties.

22. In AIR 1949 Cal 349 (I) it was held that Section 188, I. P. C. applies to orders made by public functionaries and for public purposes and not to an order made in a civil suit between party and party. Section 188, I. P C. had no application to a case of disobedience of an interim injunction issued by the court upon an application of the sublessee restraining the Sheriff and his men from executing the ejectment decree obtained against the lessees. Reference was made in this case to an earlier case of 6 Cal 445 (H).

23. In none of these cases, the meaning of the word "promulgated" was considered and they were cases in proceedings -- essentially civil court proceedings between the parties. According to the Shorter Oxford English Dictionary the word "pro-mulgate" means "to expose to public view, to make known by public declaration; to publish, to disseminate or to proclaim," The word "promulgate" necessarily implies the idea of publication. It is not necessary that the publication should be in writing. It may be oral but the word "promulgation" is not the same as the making of an order. In AIR 1925 All 165 (K) Walsh A. C. J. held that the word "promulgate" seems to indicate, if not a

formal document printed or written, at any rate some form of publication.

This was a case where the applicants were acquitted by the Sessions Judge of Jhansi of the charges under Sections 151 and 188 of the Indian Penal Code. On 19-11-1923 a Gaoshala procession with a band of musical instruments was passing along a route in front of a mosque and the sub-inspector, who was in-charge of the station, came and addressed the processionists and generally the two accused in the procession asking them to stop the music otherwise there was a likelihood of a breach of the peace. In spite of the order passed by the sub-inspector, the processionists continued to proceed and the band and the music were not stopped by the processionists. On these facts the opposite parties in that case were, prosecuted for the breach of the order promulgated by the ins pector.

Mr. Justice Suleiman (as he then was) held that the sub-inspector had no power to pass an order under Section 149, Criminal P. C. and as such there was no breach of any order under Section 188, Penal Code. He, however, held that the applicants had committed an offence under Section 151, I. P. C. and Walsh J. though he felt a doubt about the offence having been, made out under Section 188, I. P. C., ultimately agreed with the other learned Judge and held that the applicants were liable to be convicted under Section 151, I. P. C. The observations of Walsh A. C. J. do lend support to the contention of the respondent in this case that the word "promulgated" does not mean merely passing an order by a competent court, but necessarily implies the idea of publication.

24. Every order passed by a competent court is generally pronounced in court and from the mere fact that an order is communicated in the normal course it cannot be said that such an order is an order promulgated by a public servant lawfully empowered to promulgate. For the applicability of section 188, I. P. C. it is not enough that the order passed by a public servant "should be communicated by him but it should be an order which the public servant, who passes such an order, is lawfully empowered to promulgate. There should be a legal duty on an authority or public servant to promulgate such an order. By examining the provisions of Section 144 and a few other sections in the Criminal Procedure Code under which the Magis-tiates are empowered to pass certain orders it would appear that there are specific provisions in those sections by which a Magistrate in passing an order has to observe certain procedure for communicating such an order.

For orders passed under Section 144, Criminal P. C. it has been expressly laid down that such an order should be in writing stating the material facts of the case and should be served in the manner pro-vided by Section 134, Criminal P. C. Section 134, Criminal P. C. itself lays down the procedure for the service of orders passed under Section 133, Criminal P. C. It has been laid down in Section 134, Criminal P. C. that if an order is not served in accordance with the rules made under Section 134(1) it shall be notified by proclamation, published in such manner as the State Government may by rule direct. To my mind, the orders contemplated under Section 188, I. P. C. are the orders which are not only passed by competent authorities and pronounced but the section refers to orders promulgated by a lawful authority empowered by the law itself to promulgate such an order. It was strenuously urged by the counsel for the State that if orders passed under Section 145(6), Criminal P. C. are excluded from the purview of Section 188, I. P. C., there is no remedy left for the breach of such orders, and a person who may have been restrained under Section 145(6), Criminal P. C. from

interfering with possession may disobey that order with impunity.

25. Our attention has been drawn to the case of AIR 1939 Pat 611 (C). It has been observed at page 618 in this case that the possession of the party which succeeds in proceedings under Section 145, Criminal P. C. cannot be put to an end by the unsuccessful party by mere force. If after an order under Section 145, Criminal P. C. the losing parties either surreptitiously or forcibly are able to cultivate the lands these would be no more than isolated acts of trespass and offences punishable under Section 188, I. P. C. but not acts amounting to the dispossession of the other side and constituting the juridical possession of the offenders. In this case, the appellant had been convicted under Section 302 read with Section 149, I. P. C. and in the appeal against the conviction the question was as to who were in possession of the disputed plot and were the aggressors. In that connection these observations were trade and in my judgment this case is no authority tor the proposition that disobedience of order under Section 145, Criminal P. C. is punishable under Section 188, I, P. C. It was no doubt observed in this case at page 618 that:

> "The whole object of the section (S. 145, Criminal P. C.) is to stop a breach of the peace by deciding which party is to remain on the land and which party is to seek his remedy in the civil court. Breaches of the peace will continue, and the object of the Legislature will be frustrated if the party who has, on the finding that he is not in possession, been forbidden to disturb the possession of the successful party until eviction in due course of law, is allowed to interfere with the possession of the successful party and to plead once more that whatever the order might have been, he is still in possession or has been able to regain possession by force and thus either compel the successful party to go to the civil court or to coerce a Magistrate to proceed again under Section 145, Criminal P. C. This will be a definite encouragement to disobedience of orders under the section."

26. In interpreting the language of the section we are not to be guided by these considerations.

27. Proceedings under Section 145, Criminal P. C. are no doubt for the prevention of breach of the peace but they also authorise the Magistrate to investigate the question of possession and ultimately pass an order under Section 145(6), Criminal P. C. declaring that a party is entitled to possession and forbidding the other party from interfering with his possession. The question of right to possession has finally got to be decided by a competent court. If an unsuccessful party in a proceeding under Section 145, Criminal P. C., takes forcible possession of the property he may be prosecuted under Section 441, Penal Code, for criminal trespass or if there is a likelihood of the breach of the peace the parties can be bound down under Section 107, Criminal P. C.

28. As I have already pointed out if the word "promulgation" means only communication to the parties to the proceeding then the orders passed in civil proceedings or interim injunctions - communicated to the parties to the proceedings will also be covered by the provisions of Section 188, I. P. C. It was argued on behalf of the State that the mere making of an order may in certain cases amount to promulgation. The question as to whether a particular order has been promulgated and the Magistrate passing such an order is lawfully empowered to promulgate will also depend

upon the Mature of the order. If it is an order passed by a public authority in proceedings against the public in general such an order would be deemed to have been promulgated by the authority concerned. It was contended that an order under Section 145, Criminal P. C. is not necessarily an order against the party alone but it is against the public generally.

29. Our attention has been drawn to the provisions of Section 145 (3), Criminal P. C., which says that the copy of the order passed shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute, and anybody is entitled to come and object to such an order. But an order passed under Section 145(6), Criminal P. C. is a declaratory order coupled with an order forbear-ing to disturb such possession and the order is served upon the party concerned alone. Therefore under no circumstances an order passed under Section 145(6), Criminal P. C. can be said to be promulgated against those who had no knowledge of the order at all. No inference, therefore, can be drawn from the nature of the order passed under Section 145(6), Criminal P. C.

30. It has been next contended by the counsel for the opposite party that from the evidence produced by the prosecution in this case it has not been established as a fact that the opposite party violated the order passed by the Magistrate under Section 145(6), Criminal P. C. From the perusal of the complaint filed by the Magistrate it will appear that the charge against the opposite party was that she in contravention of the orders passed by the Magistrate interfered with the property on severai occasions and entered the house. The prosecution produced Brij Mohan, Ram Padarath, Sobh Nath and Manzur Alam constable. Brij Mohan states in the examination-in-chief that Darogha had put Sobh Nath in possession of the house and that Smt. Tugla also goes and lives there. She quarrels and remains in the house after closing the same. She lives there forcibly. In cross-examination, however, he says that he saw the quarrel going on at the door and heard exchange of abuses. No article was taken in his presence.

31. Ram Padarath states in examination-in-chief that possession had been delivered to Sobh Nath b the sub-inspector and the opposite party comes every month and quarrels. She indulges in 'marpit' and says that she would live in the house. 'In cross-examination, however, he says that Smt. Tugla entered the house two months after the award of possession by the court. He was not present when she entered the house for the first time. He was not present the second time as well. He saw her only when she left the place. No quarrel took place in his presence. The Musammat threw away 'thalis' etc., in his presence. She had untied the oxen.

32. Sobh Nath states that the house is in his possession. Six or seven months ago during the Magh, Smt. Tugla quarrelled with him. She called him bad names and threw out the articles belonging to him. She comes and quarrels every eighth or tenth day in the month. The pairokars of Smt. Tugla rush to beat him. In the cross-examination, however, he states that he did not make a report about the threats and trespass into the house. She entered the house five or seven months after he got the possession. She entered the house very early in the morning. She was accompanied with others. She entered the house while the others remained outside. She remained in the house the whole day and went away in the evening. She came again alter eight days along with Basdeo and others but only the

Musammat threw away his articles, cot, etc.

33. The constable Manzur Alam states that he in compliance with the orders delivered the possession of the house which was attached under Section 145, Criminal P. C to Sobh Nath and Ram Anand on 30-11-1950. He handed over the possession in the piesence of four or five persons. Smt. Tugla was not there but he met her at Soraon and told her that the possession of the house had been delivered to Sobh Nath in accordance with the order or Deputy Saheb.

34. The possession, according to the constable, was delivered to Sobh Nath on 30-11-1950. If, as has been stated by Sobh Nath the opposite party entered the house five or seven months after he got possession then she must have attempted to enter the house in March or May 1951 and no complaint was filed till June 1951. It is not the case of Sobh Nath that he was actually dispossessed by the opposite party. He only complained that she quarrelled with him and threw out some of his articles. The mere fact that she occasionally quarrels with him does not prove interference with the possession of Sobh. Nath and it cannot be said that she voilat-ed the order passed by the Magistrate.

After the order of the Magistrate on 6-7-1950 it appears that a suit was filed by Smt. Tugla for a declaration that she is entitled to the possession of the house and on 18-12-1950 an interim injunction was issued by the Munsif ordering that the status quo be maintained. It may be that as the suit was pending before the civil court the opposite party thought that she could assert her right to the property. The mere assertion of her right cannot be said to be with an intention to violate the orders passed by the Magistrate. From the evidence I am, therefore, of the opinion that it has not been conclusively established that she disobeyed the orders passed by the Magistrate under Section 145(6), Criminal P. C.

35. It was next contended by the counsel for the opposite party that as the civil suit was pending and the Munsif had passed an interim order that the status quo be maintained in effect the order of the Magistrate had been superseded, I am not prepared to accept this argument of the counsel for the opposite party. The Magistrate's order could not have been affected by an .interim order passed by the Munsif. It may be that after the suit had been finally decreed Sobh Nath could have been evicted from the house under a decree. But that does not mean that the interim order superseded the order passed by the Magistrate.

36. It was then contended that from the circumstances it will appear that Sobh Nath acted in a high-handed manner and, therefore, this Court will not interfere with the order of acquittal passed by the Magistrate. I do not think that, any such consideration is relevant to the decision of the appeal. If I had found against the other contentions raised by the counsel for the opposite party in this case I would have had no hesitation in allowing the appeal but in view of the findings on the questions discussed above I am of the opinion that this appeal should be rejected.

BY THE COURT:

37. Since there is a difference between us, let this case be laid before the Hon'ble the Chief Justice for obtaining a third Judge's opinion.

Agarwala, J

38. This case came before me on a difference of opinion between my learned brothers Desai and Mehrotra. The facts of the case briefly stated are as follows:

39. One Ram Bharose had two daughters, Gomta and Narbada and one son Ram Dulare. Ram Dulare died leaving Smt. Tugla as his widow. Ram-Bharose owned a house along with his cousin Ram Prasad half and half. Ram Prasad lived in the northern portion of the house while Ram Bharose lived in the southern portion. One Sobnath was the son of Gomta. There was a dispute between Sobnath and Smt. Tugla in respect. of the southern-portion of the house. Tugla made an application under Section 145, Criminal P. C. in the Court of the Sub-divisional Officer, Soraon, complaining that. Sobnath was attempting to dispossess her from the house. The Sub-divisional Officer attached the property and put it in possession of one Sitla Din, Superdar. Ultimately, he decided that Sobnath was in possession at the relevant time and ordered that the property shall be released in favour of Sobnath and forbade Smt. Tugla from interfering with Sobnath's possession unless otherwise ordered by a competent Court. This order was made on 6-7-1950.

It is alleged that a police officer released the-house from attachment and put Sobnath in possession on 30-11-1950. This fact is, however, not admitted on behalf of the respondent. Prior to this, however, Tugla filed a suit in the civil Court on 3-11-1950 for a declaration of her right for possession of the house. In that suit she applied for the issue of an interim injunction against Sobnath and against Sitla Din Superdar restraining Sobnath from taking possession of the house and directing Sitla Din not to deliver possession to Sobnath till the decision of the suit. The civil Court issued a temporary injunction on 18-12-1950 in terms of the application, but later on, on 18-1-1951 ordered that if Sobnath was already in possession, he was to remain in possession and the status quo be maintained. Ultimately the civil suit was decreed in favour of Tugla and she was declared to be the owner of the house and entitled to the possession of the same.

40. But during the pendency of the civil suit, the proceedings which have given rise to this appeal were taken. On 30-1-1951, i.e., after the civil court's order of 18-1-1951, Sobnath complained to the criminal court that Tugla was interfering with his possession over the house. His complaint was that Tugla entered the house in dispute with her husband Basudeo and Ram Prasad again and agate. On this complaint being made by Sobnath, the Sub-divisional Magistrate, Soraon filed a regular complaint against Tugla in the Court of the Judicial Officer, Soraon at Allahabad on 2-6-1951 under Section 188, I.P.C.

41. Four witnesses were produced on behalf of the prosecution to prove delivery of possession over the house to Sobnath and interference by Tugla in the possession of Sobnath. Prosecution witnesses Brij Mohan, Ram Padarath and Sobnath attempted to prove delivery of possession by the police to Sobnath and also Tugla's entry into the" house forcibly. Manzur Alam, constable, deposed how he delivered possession to Sobnath. He stated that Tugla was not present at the time, that he obtained key of the house from Sitla Din, the Superdar, and that he got the house opened and put it in possession of Sobnath. But he admitted that he obtained no signatures from Sitla Din and he did not say that Sitla Din was present at the time of the delivery of possession. He also stated that later on in

the day he met Smt. Tugla at Soraon and told her orally that possession of the house had been delivered to Sobnath. But he admitted that he did "not obtain any signatures of Tugla on the order.

On behalf of the accused Sitla Din Superdar swears that he had still the key of the house in his possession and that no one had taken it from him up to the date of his deposition in Court. He also stated that Tugla lived in the western portion of the house belonging to Ram Prasad and that she did not live in the southern portion. Ram Prasad and Basudeo Prasad were the other two witnesses produced on behalf of the defence. Ram Prasad stated that the southern portion of the house was still locked and was vacant. Basudeo who is the Mukhia of the village and who is 70 years of age and a zamindar-cultivator by occupation stated that Tugla did not go into the attached house. Tugla herself in her statement stated that she did not enter the house.

The prosecution witnesses did not make any distinction between the northern portion and the sou-thern portion of the house. On this evidence the learned Magistrate, without recording a finding as to whether Sobnath was put in possession of the southern portion of the house by the police constable, acquitted Tugla on two grounds: firstly, that the order passed under Section 145, Criminal P. C. could not be said to be an order which was promulgated and therefore no offence under Section 188, I. P. C. which applies to defiance of orders duly promulgated was proved to have been committed, and secondly, that the disobedience of the order did not cause obstruction, annoyance or injury or risk of obstruction or annoyance to Sobnath.

42. The Government appealed to this Court against the order of acquittal. The matter came up before two learned Judges of this Court who differed in their opinions. Desai J. was of opinion that possession had in fact been delivered to Sobnath, that the order under Section 145, Criminal P. C. having been passed in open Court must be deemed to have been duly "promulgated", that Tugla violated the order by entering the house forcibly which caused annoyance or disturbance to Sobnath and that therefore the respondent was guilty of the offence with which she was charged. On the other hand, Mehrotra J., without recording any definite finding on the question whether possession was delivered to Sobnath, held that there was no disobedience of the order and further that the order had not been 'promulgated' within the meaning of Section 188, I. P. C. and that, therefore, no offence could be said to have been committed by the respondent.

43. I have heard learned counsel for the parties and my opinion on the various points in dispute is as follows:

44. As regards delivery of possession to Sobnath,, I am not satisfied from the evidence on the record that delivery of possession to Sobnath was made in the knowledge of Tugla. It is admitted by Manzur Alam, P. W. that Tugla was not present at the time of the delivery of possession. His further statement that he met Tugla at Soraon Station and that he orally told her about it cannot be believed ia the absence of any signatures of Tugla on the order showing delivery of possession. Further the statement of Manzur Alam that he took the key of the house from Sitla Din is contradicted by Sitla Din and I cannot believe Manzur Alam on this point either, because if Sitla Din had, delivered the key to him, then he must have been present at the time of the delivery of possession and Manzur Alam should have taken his signature on the Parvana. Admittedly he did not take any signatures.

Consequently I believe Sitla Din when he says that the key was still in his possession and that possession was never taken from him. I am, therefore, unable to hold that the house was properly released in favour of Sobnath by removing Sitla Din from the possession of the house.

It is quite possible that Manzur Alam went to the spot and authorised Sobnath to enter the house and that later on Sobnath did actually enter into the possession of the house. But it is not possible to hold that the property was properly released or that delivery of possession to Sobnath was made in the knowledge of Tugla. I further hold that Tugla did enter the house, but it is not clear whether she entered the southern house which, was in dispute. It is possible that she entered the northern portion of the house which was in occupation of Ham Prasad. Since there was only one exit to both the portions, it is possible that Sobnath and Tugla quarrelled over the entry of Tugla into the house. But it is very likely that Tugla having filed a suit in the civil Court and obtained a temporary injunction against Sobnath and Sitla Din was under the 'bona fide' belief that Sobnath had not been actually put in possession of the house by the order of the criminal court, and that Sitla Din was still the Superdar of the house. For this reason I am unable to hold that Tugla knowingly disobeyed any order of the criminal Court.

45. As regards the question whether the order of the criminal Court under Section 145 was covered by the provisions of Section 188, I. P. C, I am of opinion that qua the parties to the litigation in the criminal Court, the order having been passed in their presence, the order must be deemed to have been duly "promulgated" so far as they are concerned. The word 'promulgate' means "to make known by public declaration, to publish; to disseminate or to proclaim". In essence the word connotes two ideas: (1) making known of an order and (2) the means by which the order is made known must be by something done openly and in public. Private information will not be "promulgation". But the law does not prescribe any particular mode in which an order is made known openly and publicly. It may be by beat of drum; it may be by publication in Gazette; it may be by reading out an order openly in public. Any order announced in open Court will be deemed to have been promulgated, but as the Court room is a place where the litigants are expected to go and the public at large is not expected to be present though they have right to go there if they so wish, the open declaration of the order in Court will be deemed to be a notice not to the public at large but to the parties of the case in which the order is passed. An order duly pronounced in open Court must be deemed to be duly promulgated so far as the parties to the case arc concerned.

It may further be pointed out that an order under Sections 145 and 146, Criminal P. C. is intended for the public at large also. Form No. 22, Schedule V. of the Criminal Procedure Code clearly shows that to be the case, but in the present case the learned Magistrate confined the order to Smt. Tugla alone, because it was only she who was prevented from interfering with the possession of Sob-nath and not the public at large as required by the aforesaid form.' Even so, however, the order was duly promulgated so far as Tugla was concerned and if I had been of opinion that Tugla knowingly disobeyed that order I would have held her guilty. The cases on the point have been discussed by my learned brothers and it is not necessary for me to discuss them again.

46. I would, therefore, hold that the respondent was rightly acquitted by the Court below and the Government appeal should be dismissed.

BY THE COURT:

47. In view of the opinion of the third Judge we maintain the acquittal of the respondent and dismiss the appeal.