Bansi And Ors. vs Hari Singh And Ors. on 18 November, 1955

Equivalent citations: AIR1956ALL297, 1956CRILJ561, AIR 1956 ALLAHABAD 297, 1956 ALL. L. J. 735

JUDGMENT

Mukerji, J.

1. I have had the advantage of reading the opinion of my learned brother James and I am in agreement with the conclusion arrived at by him.

2. The question which calls for our determination may be stated in the terms in which it has been stated by my learned brother, namely:

> "Whether the order of a Magistrate under Section 145(4), Criminal P. C. which does not give any reasons for the order can or cannot be upheld because the learned Magistrate chose to make the order in Form XXII or Schedule V appended to the Code of Criminal Procedure?"

Section 145(4) of the Code of Criminal Procedure is in these terms:

> "The Magistrate shall then, without refer-ence to the merits of the claims of any of such parties to a right to possess the subject of dis-pute, peruse the statement so put in, hear the parties, receive all such evidence as may be pro-duced by them respectively, consider the effect of such evidence, take such further evidence if any as he thinks necessary, and, If possible, decide whether any and which of the parties was at the date of the order before mentioned in such pos-session of the said subject:
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> Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dis-possessed as if he had been in possession at such date:
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> Provided also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section."

From the afore-quoted sub-section of Section 145 it is , clear that the Magistrate is enjoined to decide the question as to which party to the dispute was in possession of the subject-matter of such dispute. The decision has to be a judicial decision after taking evidence and after considering that evidence. It is also clear that parties have a right to be heard at these proceedings before the Magistrate's decision is given; so that all the elements, which one finds preceding a judicial decision,

have to be employed or gone through before the Magistrate can make a decision in regard to the possession of a party under this sub-section.

The question, which therefore arises, is whether the Magistrate should while making the order, merely give his decision or whether the Magistrate should give reasons for arriving at his decision. Normally all decisions that are given by courts of law give reasons for those decisions. In the judicial sphere reasons have always formed an integral part of the decision in a broad sense. A bald decision unsupported by any reasons has not really been countenanced or recognised as a judicial decision.

2A. The Code of Criminal Procedure has nowhere denned an order, nor has it laid down the requisites of an 'order' in the same manner as it has laid down the requisites of a valid judgment. It has been argued that there is a distinc- tion between an 'order' and a 'judgment', and that the distinction lies in the fact that in the case of a judgment it is necessary to give reasons for the decision, while in the case of an order it is not necessary to give the reasons.

In my opinion there is no justification in the Code of Criminal Procedure for such a broad proposition, for it is clear from some of the sections of the Code itself that there is special injunction to give reasons for some of the orders that are made under that Code. It has been suggested that those sections of the Code which specifically enjoin the giving of reasons for the orders are the only orders in respect of which it is necessary to give reasons and that in respect of those orders in respect of which the Code does not require the reasons to be given no reasons need be given.

I am again unable to accept this broad proposition for the reason that laying down such a broad proposition would run contrary to well established judicial principles of deciding matters & making orders in respect of such matters. 'Orders' are made in respect of a vast multitude of con-tingencies and there are often occasions when the order itself is made in respect of such a mat-ter as requires no reasons in support of it.

To take a very simple illustration an order directing a case to be fixed for hearing for at particular date obviously needs no reasons, but there are orders which do require reasons for there are quite a large number of orders which vitally affect the rights of the parties, and not only that but those orders can be made the subject of scrutiny in a higher court. Orders that are made under Section 145(4) of the Code of Criminal Procedure determine vital rights of contesting parties and are often made the subject-matter of at revision to the High Court.

The High Court under its powers of revision has to scrutinise the order and the High Court has power, while scrutinising that order, to exercise any of the powers conferred on a Court of Appeal by Sections 423, 426, 427 and 428 of the Code. Under Section 435, Criminal P. C. the High Court is enjoined to satisfy itself "as to the correctness, legality or propriety of any finding, sentence or order recorded or passed....." The question naturally arises how can the High Court satisfy itself as to the propriety of the order or the correctness of the order if the order does not disclose the reasons for making that order.

It was suggested at the Bar 'that the High Court could do so by itself examining the record of the proceedings. In some cases it may be possible for the High Court to satisfy itself about) the propriety of a finding or the correctness of a finding by examining the record, but often there are cases in which it may not be possible to do so, for there may be reasons which do not appear on the face of the record which may have impelled the Magistrate to make the order that he did or to take the position that he took under Sub-section (4) of Section 145, Criminal P. C. in respect of a certain dispute.

I am, therefore, clearly of the opinion that, if for no other reason, for this reason alone that orders made under Section 145 are subject to scrutiny by the High Court and that scrutiny can only toe properly made if the order under scrutiny discolses the reasons for the order, the order must contain the reasons.

3. The view expressed by my learned brother Desai in the case of -- 'Bharosa v. State', 1951 All WR HC 507 (A), which is contrary to the view that I hold, appears to me to be mainly based on the fact that the Code of Criminal Procedure in Schedule V provides a form (Form XXII) for orders to be made under Section 145. The reasoning of my learned brother Desai appears to be that if the Magistrate makes his order in the appropriate form then his order must be taken to be a valid order in view of the provisions of Section 555 of the Code of Criminal Procedure.

I regret this reasoning of my learned brother Desai does not appeal to me and I shall presently give my own reasons for taking a different view. Form No. XXII of Schedule V is in these words:

> "It appears to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (.....) concerning certain (.....) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement! of their respective claims as to the fact of actual possession of the said (the subject of dispute), and being satisfied by due inquiry had thereupon without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (name or description) is true;
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> I do decide and declare that he is (or they are) in possession of the said (the subject of dispute), and entitled to retain such possession until ousted by the due cpurse of law, and do strictly forbid any disturbance of his (or their) possession in the meantime....."
> This form is, in my opinion, a form in which the declaration which is contemplated by Section 145 of the Code is to be made and not for making the decision itself. The form makes no reference to Sub-section (4) of Section 145. Further, there is nothing in Sub-section (4) of Section 145 which calls for a declaration to be made, while the form itself, as would be seen deals with a declaration that the Magistrate makes in respect of the subject-matter of the dispute. Sub-section (6) of Section 145 states this:
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> "If the Magistrate decides that one of the parties was (or should under the first proviso to sub-section (4) be treated as being) in such possession of the said subject,

> he shall issue an order declaring such party to b& entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction (and when he proceeds under the first proviso to Sub-section (4), may restore to possession the party forcibly and Wrongfully dispossessed)".

To my mind, the declaration which is to be given in Form XXII is in respect of the afore-quoted Sub-section (6) and not Sub-section (4) of Section 145, Criminal P. C.

4. Section 555 of the Code is in these words:

> "Subject to the power conferred by section (554), and by (Art. 227 of the Constitution), the farms set forth in the fifth schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned and if used shall be sufficient."

This section also indicates, to my mind, clearly the fact that the forms contained in Schedule V are not forms which deal with judicial decisions but are forms which are to be used in order to communicate to parties the formal orders of a Court which follow decisions taken by the Court.

5. For the reasons given above, I am of the opinion that both these references should be allowed and the orders of the Magistrates set aside.

James, J.

6. These two cases have been referred to a Division Bench for deciding the following question:

> "Whether the order of a Magistrate under 8. 145(4), Criminal P. C. which does not give any reasons for the order can or cannot be upheld because the learned Magistrate chose to make the order in Form 22 of Schedule V appended to the Code of Criminal Procedure."

The reference has been occasioned by a conflict between the decision of Mr. Justice Desai of this High Court in 1951 All WR HC 507 (A) and the views expressed by other High Courts, and, I might add, the view of this Court in the case of -- 'Maqsood Khan v. State', AIR 1955 All 257 (B) decided by Beg J. as recently as April 1954.

7. The discussion which follows shall apply to an order under Section 146(1), Criminal P. C. and Form 23 of Schedule V also, since that order too is a consequence of the procedure laid down in Section 145(4), while Form 23 is analogous to Form 22.

8. In 'Bharosa v. State (A)', (supra) Desai J. had before him a case where the Magistrate had passed an order under Section 146(1) without record-ing any reasons and it was urged before him that such an order was not valid.

His Lordship repelled the contention on a variety of grounds. These were that there was nothing in the section which required the Magistrate to state his reasons, that in the absence of a statutory provision it could not be said that an order which did not contain reasons was invalid, that a consideration of various sections of the Code dealing with the passing of orders indicated that the Legislature .did not intend reasons to be given for orders under Section 145 or 146, that the use of Form 22 or 23 should be deemed to be a sufficient compliance of the requirements of the law and that it did not require reasons for the Magistrate's finding in order to enable the High Court in revision to determine whether the Magistrate had improperly assumed jurisdiction or acted with material irregularity or illegality. In his judgment his Lordship examined a number of decisions, and although a majority of them laid down that the Magistrate was bound to give his reasons, he felt himself unable to follow those decisions. (Here I should like to remark that the report of his Lordship's judgment in the A.W.R.--It does not seem to have been reported in other law journals--has so many misprints that it has been impossible to trace out several of the rulings referred to in that judgment.)

9. Now, a study of the provisions of the Code of Criminal Procedure discloses that the expression of the opinion of the Criminal Court on any matter at issue arrived at after due consideration of the evidence and of the arguments (if any) fall into two categories: Judgments and orders. Nevertheless neither of these terms has been defined either in the Criminal Procedure Code or the Indian Penal Code.

There is, however, no controversy as to what a "judgment" is. As held by the Federal Court in -- 'Hori Ram Singh v. Ernperor' AIR 1939 FC 43 (C) and -- 'Kuppuswami Rao v. The King', AIR 1949 FC 1 (D), it is used "to indicate the termination of the case by an order of conviction or acquittal of the accused", and to this, by virtue of Section 367(6), Criminal P. C. must be added orders Under Section 118 or 123 (3), orders which bear the character of a conviction. Chapter XXVI of the pode deals exclusively with Judgments, and on the basis of its exhaustive provisions there is no difficulty in recognising a criminal Court's "judgment".

Among its necessary ingredients are -- as prescribed by Section 367(1), Criminal P. C. -- the point or points for determination, the decision thereon and the reasons for the decision. But there is no chapter or section in the Code deal-Ing with the contents of an "order". One thing is nonetheless clear: orders fall into two classes; for an order of one class the Code expressly enjoins the giving of reasons; to orders of the other class no such condition is attached. When therefore the framers of the Code were careful to make this distinction between orders and under Section 367(6) went to the length of providiig that an order under Section 118 or Section 123(3) shall be deemed to be a judgment, i.e., the order should be supported by reasons, we are prima facie on safe ground in inferring that in the absence of an express or Implied provision they did not contemplate an "order" passed under the Code to be supported by reasons.

In other words, where an order must be supported by reasons the Code says so either expressly or by necessary implication; where reasons are not necessary the Code is silent.

10. The question therefore is whether on a plain reading of the provisions of Section 145 (4), Cr. P. C. the recording of reasons has been dispensed with either expressly or by necessary implication. The material part of this sub-section is in these words :

> "The Magistrate shall then, without reference to the merits or the claims of any of such-parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be pro-duced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he, thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject."

The relevant part of Sub-section (1) of Section 146 runs as follows :

> "If the Magistrate decides that none of the parites was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof."

I concede that the proceedings before the Magistrate are of a summary nature; I further concede that the Magistrate's order is not clothed with a mantle of finality, for the authority to decide the dispute finally is vested in the competent civil or revenue Court. These factors notwithstanding the somewhat complicated procedure enjoined on the Magistrate makes it decidedly hard for me to accept the view that he can "consider the effect of such evidence" land "decide" or find himself "unable to satisfy himself" Without giving any reasons for his decision.

It has been argued that the process of deciding is a purely mental act of the Magistrate and does not require him to justify it with reasons. The argument is not impressive, as a consideration of the various things he is required to do discloses. He has first to peruse the statements filed by the contesting parties; next he has to hear them; he has then to receive all such evidence as they may choose to produce; after that he has to consider the effect of all such evidence. If he is still not satisfied as regards the question of possession he is authorised to take such further evidence as he may deem necessary.

It is after all this that he has to try to decide' whether any and which of the parties was in possession. Provision has further been made for the contingency of his coming to the conclusion either that none of the parties was in possession or that he is unable to satisfy himself as to which of them was in possession. With this elaborate procedure prescribed for the Magistrate it does not appeal to one's reason or com-monsense that no reasons on his part are necessary or that through a purely mental act he can "decide" as to which of the parties was in possession or that none was in possession or that possession was indeterminate. Reasons would be necessary, if for nothing else, for the Magistrate himself to reach a just and proper decision.

I am, therefore, of opinion that Section 145 (4), Cr. P. C. is not one of those provisions where the Legislature have either expressly or by necessary implication dispensed with the giving of reasons,

and I consider that the very wording of this provision of the Code enjoins the recording of reasons.

11. By way of analogy I may mention Section 489 of the Code which provides for the maintenance of wives and children. This section authorises a Magistrate to order a husband or father who neglects or refuses to maintain his wife or child to make a periodic allowance "upon proof of such neglect or refusal", and Sub-section (6) clearly lays down that the entire evidence of the parties must be recorded in the presence of the husband or father (or his pleader) and in the manner prescribed in the case of summons-cases. Yet the section nowhere says that the Magistrate is bound to record the reasons for his order.

It may, therefore, be arguable that without giving his reasons and purely through a mental act the Magistrate can hold neglect or refusal proved and in consequence allow maintenance. I do not think that in view of the procedure prescribed by the section it is possible to support the view that the Magistrate is permitted to make his order without justifying them with reasons. I consider that the phrase "upon proof of such neglect or refusal" means that reasons must be given for holding that there has been neglect or refusal. I am firmly of opinion that the expressions "consider the effect of such evidence" and "decide" in Section 145 (4), Cr. P. C. have been employed by the Legislature in the same sense.

12. The problem may be viewed from another angle. If the intention of the Legislature was to make the Magistrate, at least so far as the criminal Courts are concerned, the final authority in deciding disputes relating to immovable property, it might have been arguable that he was not bound to justify his decision with reasons.

But the Code makes every order passed by him under Section 145 or 146 revisable by the High Court, and the powers of revisions are exceedingly wide, for Sections 435 (1) and 439 (1) authorise the High Court to satisfy itself as to the correctness, legality or propriety of any rinding or order recorded by a subordinate court, and as to the regularity of any proceedings of such subordinate Court, and it is authorised under its revi-

gional powers to pass any order or give any direction which the court of appeal can do under Sections 423, 426, 427 and 428, Cr. P. C. How can the High Court discharge its statutory duty adequately if the Magistrate fails to give any reasons for his decision under Section 145 or 146? It is its duty to see that the Magistrate has complied with the mandatory provisions of Section 145 (4). It can obviously not do so if the Magistrate has omitted to support his finding with any reasons. It has been suggested that orders under Section 145 or Section 146 are usually based on findings of fact and that the High Court in revision does not interfere with such findings.

The argument is untenable.

It may be that in normal practice the High Court does not disturb a finding of fact arrived at by a subordinate Court; nevertheless it is incontestable that it has full power to do so, and indeed it frequently happens that the High Court in revision upsets even findings of fact.

For one thing, it invariably wants to make sure that the Magistrate has applied his mind to the facts and circumstances of the case and that he has acted within the four corners of his jurisdiction.

I should like to lay special stress upon the phrase "consider the effect of such evidence" occurring in Section 145 (4), for quite obviously un-less the Magistrate gives his reasons it would be impossible for the High Court to determine whe-ther or not he has obeyed this injunction.

13. I turn now to examine the contention based on the Forms contained in Schedule V, Criminal P. C. It has been argued that this Schedule prescribes Form 22 for an order under Section 145 and Form 23 for an order under Section 146, and that, as laid down by Section 555, the use of these forms for the respective purposes therein mentioned is sufficient, so that the Magistrate makes sufficient compliance with the law if, instead of giving reasons for his decision, he merely fills up these forms, I find the contention untenable.

These forms when duly filled in are of the nature of formal and ministerial orders of the Court; they are not intended to usurp the place of the Court's judgment--they are issued in con-sequence of the judgment Take for instance the case of an accused person found guilty by a Magistrate and sentenced to imprisonment. The Magistrate writes his judgment, and following it fills in Form 29 of Schedule V. The order contained in this form is addressed to the Superintendent of the jail and is sufficient authority for him to detain the con-victed person in his jail for the appropriate period -- the Superintendent does not need a copy of the judgment for doing so; for his purpose the form is sufficient. It is in this sense that the words "may be used for the respective pur- poses therein mentioned, and if used shall be sufficient" have been employed in Section 555.

It will perhaps conduce to clarity of thought if we bore in mind that the forms in Schedule V bear the same relation to the corresponding judgment or order of the Criminal Court that the decree does to the judgment of a civil Court. Forms 22 and 23 of Schedule V are in the nature of a formal and ministerial order of the Magistrate drawn up 'after' the procedure prescribed in Clause (4) of Section 145 has been followed by him. The order in Form 22 is issued as a result of the direction given in Clause (6) of Section 145 whereby the Magistrate is required to "issue and order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction."

Form 23 contains his order of attachment under Section 146 (1), and, incidentally, it will bet noticed that the order in this form is addressed to a police officer or the Collector. Form 22 is sufficient for the purpose of the Magistrate's final declaration on the question of possession; Form 23 is sufficient for the purpose of getting the disputed property validly attached. Nothing more than this is contemplated by Section 555, from which it follows that Form 22 or Form 23 leaves the operation of Section 145 (4) unaffected.

14. The weakness of the argument that the use of a form set forth in Schedule V is sufficient compliance with the law and that nothing further is required is exposed by a consideration of, for instance, Section 90 under which the Court is entitled to issue a warrant of arrest, but -- it is necessary to note -- after recording its reasons in writing. Yet there is at the same time a form, Form

7 of Schedule V, covering the subject.

If the argument were tenable the mere issue of this form (duly filled in) would be sufficient. But quite obviously this cannot be so, for we have Section 90 expressly reciting that the Court must record its reasons in writing, so that without the recording of such reasons the issue of the warrant would be contrary to law.

This re-enforces the view that the forms of Schedule V, though no doubt sufficient for the purposes they are intended to fulfil, cannot usurp the place of the Court's order; they are issued in compliance with the Court's order but cannot take its place.

15. The case law of the subject in controversy may now be examined. In 1921 a Division Bench of the Calcutta High Court in -- 'Bhutan Chandra v. Nibaran Chandra', AIR 1922 Cal 383 (1) (E), had before it an order under Section 145 (4), Criminal P. C. unsupported by reasons and 16 was urged that the recording of reasons was not necessary inasmuch as Sections 366 and 371, Cri-minal P.C. did not apply. Their Lordships held:

> "Whether the sections cited do or do not apply to proceedings under Section 145, Criminal P. C., we have no doubt that we are entitled to require from the trial Magistrate a statement of the reasons for his decision sufficient to enable us to determine whether he has or has not complied with Sub-section (4) of Section 145, Criminal P. C. land directed his mind to the consideration of the effect of the evidence adduced before him.
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> Without such statement of reasons it is impossible for us to determine whether the Magistrate in making his final order has acted within or without his jurisdiction. The statement of reasons in the present case, which is merely to this effect that five witnesses had been examined, that the learned pleaders had been heard and that the oral and documentary evidence of both parties had been considered in the light of the arguments addressed to the court -- is of a stereotyped nature applicable to any and every case, and obviously does not enable us to understand what in fact the evidence was or to say that the mind of the trying Magistrate had been properly and sufficiently directed to its considera-sion."

That decision was followed by a Division Bench of the same Court in 1924 in -- 'Mota-herali Jamadar v. Eshaque Sikdar', AIR 1924 Cal 848 (F), and it was ruled that in passing final orders, under Section 145 a Magistrate must give a statement of the reasons for his decision sufficient to enable the High Court to determine when ther he has or has not complied with Sub-section (4) and whether he has directed his mind to the consideration of the effect of the evidence adduced.

A similar question was at issue before another Division Bench of that Court in the same year in -- 'Ishan Chandra v. Hridoy Krishna Bose', AIR 1925 Cal 1040 (G), and there arose a difference of opinion between the two Hon'ble Judges as to whether or not the Magistrate was bound to record his reasons for passing his order under Section 145 (4). The third Hon'ble Judge to whom the matter

was referred found himself in entire accord with the judgments in 'Bhuban Chandra v. Nibaran Chandra (E)' and 'Motaherall Jamadar v. Eshaque Sikdar (F), (supra)', and observed :

> 'To what extent a Magistrate should give effect to what has been so decided one cannot lay down by general rule, but I may say that provided he complies with what learned Judges have said is necessary for the purpose of enable ing this Court to appreciate and deal with the case in revision, a degree of brevity which would be out of place in a judgment to which Section 367 applies would not necessarily be open to objection."
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> These decisions have been consistently acted upon by the High Court at Calcutta.

16. In 1920 a single Judge of the Patna High Court in -- 'Khedan Mahto v. Hussaini Kalal'. AIR 1921 Pat 166 (1) (H), following the earlier case of 'Mukhim Singh v. Nathuni Kahar', 15 Cal WN LXXI (I), held :

> "An order under Section 146, Criminal P. C. can only be passed when the Magistrate, upon a consideration of the evidence, is unable to come to a definite finding as to the possession of either party. In order to show the Magistrate's inability to decide the question of possession, he ought to have discussed the evidence in the case and given reasons for his inability."

17. 'P. Subba Goundan v. Section Subbayya Goun-dan', AIR 1923 Mad 142 (J), decided in 1922, and -- 'ChellapathI Naidu v. Subba Naidu'. AIR 1928 Mad 1230 (K), decided in 1923, are two single Judge decisions of the Madras High Court In cases under Section 145, Criminal P. C., and their special interest lies in the fact that in both the filling up of Form 22 of Schedule V of the Code was called into question.

In the former case it was contended that the Magistrate had ignored those provisions of Section 145 which rendered a judicial determination necessary and that by filling in Form 22 he had merely contented himself with issuing a formal and ministerial order. For the opposite party it was strenuously contended that it should be as-sumed that the Magistrate had arrived at a mental decision, though he failed to record it, and that the declaration in his order necessarily involved a decision in regard to actual possession.

It is not clear from the report as to what his Lordship's decision was on the disputed point, but it seems that, following 'Bhuban Chandra Hazra's case (E), he considered the writing of a judgment necessary. In actual fact he decided the case on the point that the Magistrate had failed to decide as to which party was in possession and this was held sufficient to enable the) High Court to interfere on the ground that the Magistrate had acted without jurisdiction. In the second case, the case of 'Chellapathi Naidu v. T. Subba Naidu (K)', it was observed.

> "I may add that in this case, even if the learned Sub-divisional Magistrate's order had not been without jurisdiction, it would have been necessary to send the proceedings

> back to him in order that he might write a proper judgment in the case. What he has done is, when he came to the end of his enquiry, to fill up Form 22 in Schedule V of the Code, which is in the nature, of a decree, and leave the matter there without any explanation of his reasons or his view of the evidence put before him.
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> It would be very convenient to Magistrates if they could be allowed to dispose of such cases in that way; but there can be no doubt that it is their duty to write an order or judgment which shows that they have considered the contentions of the parties and the evidence put before them and which gives the reasons for their decision. There is nothing in Section 145 to ab-solve a Magistrate from that ordinary duty."

Thus his Lordship was clearly of opinion that the filling up of Form 22 was insufficient and that the Magistrate was bound to record the reasons for his decision.

18. The late Chief Court of Oudh, too was of opinion that the Magistrate must discuss the evidence adduced by the parties and must give his reasons for his decision. This appears from the case of -- 'Munir Ahmad v. Mhmud-ul-Haq', 1938 Oudh WN 673 (L), decided by Ziaul Hasan J. in 1938.

In that case the Magistrate had in his order referred to the evidence produced by the parties but had neither discussed it nor given any reasons as to why he could not come to a definite conclusion on that evidence; following two decisions of the Patna High Court his Lordship set aside the Magistrate's order and sent the case back to the Magistrate for coming to a definite finding- on the evidence.

19. There is finally the very recent decision) of our own High Court in AIR 1955 All 257 (B), decided by Beg J. Apparently no reported cases were cited before him, and in particular Desai J.'s judgment in 'Bharosa v. State (A) (supra)', was not brought to his notice. Nevertheless his Lordship on a consideration of the wording of the section had no difficulty in concluding :

> "I am of opinion that the provisions of Section 145, Sub-section (4) in this regard are mandatory and it is the imperative duty of the Magistrate to write such an order as to make it appear to the revisional Court that he has made a genuine attempt to comply with the provisions of law in this regard."

In respect of the argument that the use of Form 22 of Schedule V was sufficient his Lordship held that this was not so, pointing out that if the contrary view be accepted it would be open to the Magistrate to disregard all the evidence, and by merely filling up the prescribed form to secure for his order, however perverse and unreasonable, an exemption from all scrutiny and criticism by the higher Court.

20. A view contrary to that taken in the above mentioned decisions was expressed by this High Court in -- 'Brij Pal Singh v. Ram Naresh Singh', AIR 1932 All 325 (M), decided by Pullan J. in 1932, on the short ground that Section 145, Criminal P. C. "does not say that the Magistrate has got to write an order so convincing as to make a revisional Court equally sure that one party is in

possession rather than the other."

'T. Surya Rao v. S. Sathiraju', AIR 1948 Mad 510 (N), decided by a Single Judge of the Madras High Court in 1948, was a case where the enquiry under Section 145, Criminal P. C. had been made and the order written and signed by a Magistrate while it was pronounced in Court by his successor, and the Question was whether the order so pronounced was valid.

Following the well-known maxim 'expressio est exclusio alterius' his Lordship held that a decision under Section 145, Criminal P. C. cannot be a judgment within the meaning of the term in Section 367, Criminal P. C., so that the final adjudication of the proceedings under that section is not intended to be a judgment at all.

It is permissible to assume that his Lordship was of opinion that for an order under Section 145 to be valid it was not necessary for reasons to be recorded.

21. These are, however, the only two rulings which have been brought to my notice in an attempt to support the proposition that an order under Section 145 (4), Criminal P. C. does not require reasons on the Magistrate's part, although even they do not lay down anywhere that the mere filling up of Form 22 or Form 23 of Schedule V is sufficient; otherwise judicial authority overwhelmingly supports the conclusions arrived at by me on a consideration of the wordings of Sections 145, 146 and 555 and the nature and effect of the forms contained in Schedule V of the Code.

22. It is clear, therefore, that it is imperative for the Magistrate to record his reasons for his decision, or for his inability to decide, in the matter of possession. But the question stilt remains as to what should be the extent of the reasons. I agree that the Magistrate is not required to write an elaborate or detailed judgment, such as is demanded by Section 367 (1), Criminal P. C. But he must give a statement of the reasons for his decision sufficient to enable the High Court to determine whether he has or has not compiled with Sub-section (4) of Section 145, and directed his mind to the consideration of the effect of the evidence adduced before him. This'is the principle laid down by their Lordships of the Calcutta High Court in 'Bhuban Chandra Basra's case (E), (supra)', a decision with which I am in respectful agreement.

I might add that the recording of reasons necessarily involves a brief discussion of the evidence, with great respect to Desai J., I find myself unable to accept his views expressed in the case of 'Bharose v. State (A), (supra)'.

23. Accordingly my conclusions are :

> (a) in proceedings under Section 145 (4), Criminal P. C. the Magistrate must briefly discuss the evidence and give reasons for his decision;
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> (b) the reasons must be sufficient to enable the superior Court to determine whether or not he has complied with the provisions of Section 145 (4) and directed his mind to the consideration of the effect of the evidence adduced before him;

(c) the mere filling up of Form 22 or Form 23 is not sufficient for the purpose of that subsection; and (d) these forms merely contain the formal or ministerial order of the Magistrate, and their filling up is sufficient only for the purpose of issuing the declaration demanded by Section 145 (6) or directing the police or the collector to attach the disputed property under Section 146 (1). In the result my answer to the question referred? to this Division Bench is in the negative.

24. Reference No. 9 of 1954 raises yet another question, namely, whether for the pendency of a revision against the Magistrate's order under Section 145, Cr. P. C. the High Court is entitled to pass an order staying the operation of the Magistrate's order regarding delivery of possession.

25. I have no difficulty in answering this question in the affirmative. Section 435 (1) empowers the High Court to call for and examine the record of any proceeding before any infe-rior criminal court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court, while under Section 439 (1) the High Court sitting as a Court of revision is vested with the same powers as a Court of Appeal under Sections 423, 426, 427 428 and 338, not only in the case of any proceeding the record of which has been called for by itself, but which has been reported to it for orders by a subordinate Court or which has otherwise come to its knowledge.

The powers of the Court of Appeal on the subject of stay are found prescribed in Section 426 (1). By virtue of this sub-section the Court of Appeal can, not only order the suspension of the execution of the sentence on a convicted person, but can also direct the stay of any order appealed against. Section 439 (1) has invested the High Court with exactly the same powers while exercising its revisional jurisdiction.

It clearly follows that the High Court in entertaining a revision against an order of a subordinate court has full power to stay or suspend the execution of that order for the pendency of the revision. Thus the authority of the High Court to stay the execution of an order under Section 145, Cr. P. C. which comes before it in revision cannot be challenged.

26. It is perhaps necessary to emphasise that in this regard the revisional powers of the Sessions Judge or the District Magistrate are far inferior, for under Section 435 (1) or Section 438 (1) of the Code they can only direct stay of the exe-cution of any sentence passed on an accused person by a subordinate Court, while they have no power to stay the execution of any order.

It would be well for Sessions Judges and District Magistrates to bear in mind this limitation in their judicial powers, for not infrequently this Court comes across where in entertaining a revi-sion those Courts have stayed the execution of orders of subordinate Courts, whereas their powers of directing stay are strictly confined to sentences on convicted persons. Indeed, their authority to grant stay in a revision is far less than that in an appeal, as a comparison between Sections 426 (1) and 435 (1) will reveal.

27. I turn now to deal with these two references on merits. Reference No. 350 of 1953 is by the Sessions Judge of Meerut and arises out of an order under Section 145, Cr. P. C. by Sri A. H. Drummond, Sub-Divisional Magistrate of Sardhana, upholding the possession of the party of Hari Singh. The Magistrates decision waa confined to filling in Form 22 of Schedule V. In this form he mentioned that he had satis-fied himself on the question of possession by considering the copies of 'Khasras', 'Khataunis' and 'Khewats' of 1357F. and the statements of eight witnesses of one party and three witnesses of the other. But he neither mentioned the nature of the evidence, nor did he discuss it, nor did he give any reasons for his finding that Hari Singh's party was in possession.

The learned Sessions Judge has recommended that Sri Drummond's order be set aside and he be directed to write an order in accordance with law. Reference No. 9 of 1954 is by the Sessions Judge of Fatehpur and relates to an order under Section 145, Cr. P. C. by Sri B. Deo, Sub-Divisional Magistrate of Khaga, holding Dukhi Singh's party to be in possession.

Sri Deo's order again was in Form 22, but, unlike Sri Drummond's order, did not even mention the evidence of the parties. Needless to say, no reasons were recorded for affirming the claim of Dukhi Singh's party. The learned Sessions Judge of Fatehpur has made a recommendation similar to that of the Sessions Judge of Meerut.

28. As already pointed out by me, in proceedings under Section 145 (4), Cr. P. C. the Magisn trate must briefly discuss the evidence and give his reasons for arriving at the decision that he does, and further the mere filling in of Form 22 is totally insufficient for the purpose of that sub-section. Consequently the orders of both Sri Drummond and Sri Deo are in violation of the law and cannot be approved.

Accordingly both these references should be accepted, the orders of the two Magistrates set aside, and the cases remanded to them for dis-

postal according to the law as laid down in the foregoing.

29. By The Court : Our answer to the main question referred to us is that the order of a Magistrate under Section 145 (4), Cr. P. C. which does not give any reasons for the order cannot be upheld merely because the learned Magistrate chose to make the order in Form 22 of Schedule V, Cr. P. C.

30. Our answer to the second question raised in reference No. 9 of 1954 is that during the pendency of a revision against the Magistrate's order under Section 145, Cr. P. C. the High Court has full power to pass an order staying the operation of the Magistrate's order regarding delivery of possession.

31. As already pointed out by us, in proceedings under Section 145 (4), Cr. P. C. the Magistrate must briefly discuss the evidence and give his reasons for arriving at the decision that he does, and further the mere filling up of Form 22 is totally insufficient for the purpose of that sub-section. Consequently the orders of both Sri Drummond and Sri Deo are in violation of the law and cannot be approved.

Accordingly both these references are accepted, the orders of the two Magistrates set aside, and the cases remanded to them for disposal according to the law as laid down in the foregoing. In case either or both the Magistrates have since been transferred to other districts, the remanded cases shall be decided by their res-pective successors.

32. Mr. Takru has prayed for the grant of la certificate of fitness for appeal to the Supreme Court, in accordance with the Rules of this Court which lay down that such a prayer must be made before or at the time of the delivery of judgment. He has however not been able to mention any adequate grounds on which such certificate could be granted to him. He is suffering under a handicap in so far as he has nob yet had a chance of seeing our judgment and considering over it.

He has, therefore, requested for 10 days' time to provide him the opportunity of considering over this question and making out the reasons for his prayer. In our opinion this is a very valid ground for deferring making our final order in this matter. We accordingly permit Mr. Takril to renew his prayer for a certificate after 10 days. He will however renew his prayer by means of an application setting forth the grounds on which he seeks the required certificate from this Court.