

## Sri Chand vs Dhundi Ram Mathuri on 25 February, 1954

**Equivalent citations: AIR1955ALL56, 1955CRILJ178, AIR 1955 ALLAHABAD 56**

ORDER

Roy, J.

1. This is an application in revision by Sri Chand against an order dated 24-3-1952, passed by the learned District Magistrate of Agra by which ha refused to interfere with an order dated 29-10-1951, passed by the learned City Magistrate of Agra in a case under Section 145, Criminal P. C. The case furnishes an instance which illustrates that the provisions of Sections 145 and 146, Criminal P. C., are so easily attracted by Magistrates with utter disregard of what those sections really contemplate before an action under those sections can be warranted.

2. On 18-9-1950, a complaint was lodged by Dhundi Ram opposite party against Sri Chand, applicant in the Court of the City Magistrate which runs as follows:

"The applicant has a plot of land in the Naya Nagla within police circle Chatta in Agra. There exists a temple over this land. The opposite party who plies his cart on hire used to stable his bullocks by the side of the road. The road was under repairs by the Municipality. The opposite party then temporarily tethered his cattle over the land of the applicant by his leave or license. Later on the opposite party started entertaining evil designs and was prepared to pick up fight with the applicant. The opposite party now intends to make construction over this land very soon. If he is not prevented it might lead to serious breach of the peace. Action may, therefore, be taken."

On the application the learned City Magistrate directed the station officer of police station Chatta to inquire and report by 28-9-1950. The report was not forthcoming and time was enlarged and ultimately the S. O. made the following report on 2-1-1951.

"Dhundi Ram and others have taken lease of 6 bighas of land from the Nazool Department. From out of that land he had left vacant a portion with the intention of constructing a temple, and the rest of the land was built upon and converted into 'abadi'. Since the disputed piece of land was lying vacant, Sri Chand Jatav used to tether his cattle on it. Dhundi Ram and others now desire to construct a temple over this land, but Sri Chand has been opposing and resisting it. Under these circumstances there is apprehension of breach of peace. Orders are solicited for attaching the property."

3. Upon that report the learned City Magistrate passed the following order on 3-1-1951:

"Attach property. Issue notice to opposite party. Pis date for evidence."

Sri Chand filed a written statement before the City Magistrate contending that he has been in exclusive possession over this land for nearly three years; that there was no apprehension of a breach of the peace and that Dhundi Ram was not in possession over the property within the last three years. The City Magistrate required the parties to produce such evidence as they liked in support of their respective claims. Dhundi Ram relied upon a lease purported to have been executed in his favour and in favour of others by the Nazool Department on 22-8-1922. He did not, however, produce any oral evidence in support of his contention that he was in actual physical possession over this land or that there was really an apprehension of breach of peace.

There was further no evidence strictly to connect the identity of the disputed piece of land with any part of the land covered by the lease aforesaid. On the other side there was the evidence of Sri Chand supported by two other witnesses Daulatia and Parbhati, all of whom swore that Sri Chand has been in actual physical possession over this land for nearly the last three years and there was really no apprehension of breach of peace with regard to this plot of land.

It may be noticed that the police Sub inspector who had made the report dated 2-1-1951, was not produced on behalf of Dhundi Ram, nor was he examined by the City Magistrate in order to refute the contention of Sri Chand and his witnesses that Sri Chand was really in possession for the last three years and there was no likelihood of breach of peace.

In spite of these circumstances the learned City Magistrate by his order dated 29-10-1951, observed as follows:

"For the applicant in this case no witnesses have been examined to prove that he was in actual physical possession of the land in dispute. He has however produced one document which is a lease of the Municipality, this land being given by the Municipality to him in the year 1922. From this document it is clear that at one time or the other the applicant was in possession of the land but it does not necessarily lead to the conclusion that he was in possession of the land when proceedings under Section 145, Criminal P. C., were started. This document goes to prove the proprietary rights or rather the rights of a lessee as given to the applicant by the Municipal Board.

On the other hand two witnesses have been examined by the opposite party and from this evidence it appears that an attempt has been made to bring about that the land was in possession of the opposite party and as such he was in actual physical possession of it, but the evidence produced by the applicant and the opposite party is insufficient and it is not possible to come to a definite conclusion as to which party was in actual physical possession. In view of this I order that the land remains attached and the dispute be referred to a competent court by which the rights of the

party can be determined."

4. From what has been stated above, it is obvious that neither in the order dated 3-1-1951, nor in the order dated 29-10-1951, did the learned City Magistrate come to a finding that there was really an apprehension of breach of the peace. The learned City Magistrate completely brushed aside the statement of Dhundi Ram the complainant in his complaint dated 18-9-1950, in which there was a clear admission that Sri Chand has ' been in possession over the land although he contended in the same complaint that that possession was permissive. When the order of the learned City Magistrate was brought into question in revision before the learned District Magistrate of Agra, the District Magistrate's attention was drawn to the statement contained in the complaint of 18-9-1950 by Dhundi Ram regarding possession; and it was urged before him that since the possession of Sri Chand over this land was admitted by Dhundi Ram himself on the material dates, Sri Chand's possession could not be disturbed by an order under Section 145, Criminal P. C. On that aspect of the matter the learned District Magistrate observed as follows:

"It has been stressed before me that the application of Dhundi Ram dated 18-9-50 shows that he was not in possession. I do not agree with this view although this application shows that Sri Chand was using this land also partly. I agree with the City Magistrate that the evidence of neither party is such as would lead to a positive conclusion about the fact of possession by either party.

It has also been urged before me that action should be taken by me under Section 146 (1), Criminal P. C. There was a clear report by the police that there was a dispute about this land and an apprehension of breach of peace. It also appears that Sri Chand was adopting the usual tactics of putting up a temple these days whenever someone wants to encroach on somebody else's land. This practice has to be condemned and discouraged. As such I do not see any justification of releasing the land in exercise of my authority. I do not find any force in the revision which is dismissed."

5. The learned District Magistrate completely overlooked the provisions of Sections 145 and 146, Criminal P. C. when he passed that order. In the first place, there was a clear admission by Dhundi Ram in his petition of complaint dated 18-9-1950 that Sri Chand was in possession over that portion of the land which was in dispute. In the second place, Dhundi Ram never produced any evidence in support of his alleged possession. But on the contrary there was the evidence in the sworn testimony of three witnesses produced on behalf of Sri Chand to the effect that for the last three years Sri Chand has been in actual physical possession over the land. Furthermore, there was no evidence on behalf of Dhundi Ram that there was an apprehension of breach of peace. On the contrary there was the evidence of three witnesses on the other side who stated that there was no apprehension of breach of peace.

6. I am unable to understand how under these circumstances the courts below came to the conclusion that the evidence of neither party was such as would lead to a positive conclusion about the fact of possession of either party. There was also a factual error in the order of the learned

District Magistrate when he observed that it was Sri Chand who was "adopting the usual tactics of putting up a temple these days whenever someone wants to encroach on somebody else's land."

Sri Chand never wanted to construct a temple over this land. In fact; the whole of the controversy regarding the temple has been misunderstood by the two courts. In the complaint dated 18-9-1950 no reference was made that Sri Chand was desirous of constructing a temple over this land. In the police report dated 2-1-1951, it was stated that Dhundi Ram and others now desire to construct a temple over this land, but Sri Chand has been opposing and resisting it. The learned District Magistrate was, therefore, entirely wrong in coming to the conclusion that Sri Chand was "adopting the usual tactics of putting up a temple by encroaching upon somebody else's land."

7. Section 145, Criminal P. C., requires that there must be a present dispute and a likelihood of breach of peace; that is, there must be a present fear that it is probable that there will be breach of the peace owing to the dispute unless proceedings are taken under the section. This does not mean that orders under the section are to be made when somebody comes and says that he fears that breach of the peace will occur a considerable time ahead. The procedure under the section is intended to deal with conditions in which the parties responsible for law and order have an existing fear that unless steps are taken under the section, a breach of the peace will occur before they can prevent it. A Magistrate before taking action under Section 145 must find that he is satisfied that a dispute likely to cause a breach of the peace within his jurisdiction exists. In the absence of a statement to that effect in his order it may be said that he has no jurisdiction to act under Section 145. It is desirable for a Magistrate to record in his preliminary order the reasons why he is satisfied that a dispute likely to cause a breach of the peace exists.

This is what Section 145, Criminal P. C., requires. The omission to do so may not divest the Magistrate of jurisdiction but would only be an irregularity curable by Section 537 of the Code. But if that is cured at the earlier stage, the order passed by the Magistrate at the later stage must shew that the Magistrate without reference to the merits of the claims of any of such parties to the rights to possess the subject of dispute and after hearing the evidence which the parties chose to produce has come to a decision whether any and which of the parties was at the date of the order in possession over the property. In the present case there was clear proof of possession of Sri Chand on the material dates. It should be held as a very important principle in cases under Section 145, Criminal P. C., that a Magistrate should be extremely reluctant to attach the property in dispute, unless there are clearest indications to show that without the attachment the evil consequences which the section is intended to remove will immediately flow.

It is quite intelligible that the Magistrate might be in a position to say with confidence that he was unable to satisfy himself as to the possession of the parties in cases where the land is jungle or waste land. But whereas in the present case the land was admittedly in possession of Sri Chand, and there was no proof at all to show that there was likely to be a breach of peace the Magistrate was only admitting his own weakness if he stated that he could not come to a decision on the question of possession. He had before him two parties, one of whom, namely, Sri Chand was quite ready with information and the other, namely, Dhundi Ram kept himself aloof from the proceedings except that he filed the deed of lease existing in his favour. The information that was given to the

Magistrate by Sri Chand might have been true or false; but it was his duty to collect information and sift it.

After all, the order under Section 146 is almost the same as an act of confiscation and therefore a Magistrate should naturally be reluctant to make use of that section. Apart from the fact that the whole of the proceedings in this case under Sections 145 and 146 are replete with irregularities, the material that was produced before the trial court could lead one to the only decision that Sri Chand has been in possession over the land for about the last three years, and that there was no apprehension of breach of peace.

8. In this view of the matter the order of the two courts cannot be supported. I, therefore, set aside those orders and direct that the property which has been attached should be released in favour of Sri Chand.