

Vidya Ram vs Ganga Sahai on 2 November, 1951

Equivalent citations: AIR1953ALL455, AIR 1953 ALLAHABAD 455

ORDER

Brij Mohan Lall, J.

1. This is a reference under Section 438, Cr. P. C. by the learned Sessions Judge of Bulandshahr recommending that an order passed under Section 145, Cr. P. C. by the learned Section D. M. of Anupshahr be vacated.

2. It appears that one Vidya Ram made a petition under Section 145, Cr. P. C., in the court of the Section D. M. Anupshahr. The S. D. M. appears to have been absent from the station and Sri Jagat Narain Beri, an Honorary Special Magistrate, was in-charge of his work. Sri Beri passed the following order, namely:

"S. Order Dabai.

Please report if there is an apprehension of breach of peace. If so, attach."

This order was passed on 23-12-49. The police report is dated 27-12-1949. It states inter alia, that there is an apprehension of a breach of the peace and that attachment has been made. This report was put up before the S. D. M. on 6-2-1950 who wrote out the following order immediately below the report, namely: "Accused to be summoned for 27-2-50." Thereafter, the parties put in appearance and filed written statements of their claims. The S. D. M. was transferred and his successor after recording the evidence came to the conclusion that the opposite party was in actual possession of the disputed land and crop. Thereupon he declared the opposite party to be in possession and forbade interference on the part of Vidya Ram.

3. Vidya Ram went up in revision before the learned Sessions Judge and one of the points urged on his behalf was that Sri Jagat Narain Beri was not competent to pass an order in a case which was instituted in the court of S. D. M. Anupshahr. The learned Sessions Judge has repelled this contention and has pointed out that Sri Beri had been placed in charge of the work of S. D. M. Anupshahr and was competent to deal with the case. I agree with the learned Sessions Judge and it is not necessary for me, in view of the finding of fact recorded by him to say anything more on this point.

4. The other contention put forward on behalf of Vidya Ram which has found favour with the learned Sessions Judge is that the order of attachment passed in this case was without jurisdiction and that this irregularity vitiated the entire proceedings. The learned Judge has pointed out that it was for the Magistrate to be satisfied about the existence of a dispute likely to cause a breach of the peace and thereafter he should have himself passed the order of attachment. The learned Judge is right in saying that the Magistrate could not delegate to the police authorities the power to make attachment nor could he make the question of attachment of property depend on the satisfaction of the police authorities. On this point, I am perfectly in agreement with the learned Judge & I have no hesitation in declaring that the order of attachment was not properly passed. But I am unable to agree that this irregularity or illegality (by whichever name it may be described) had the effect of vitiating all subsequent proceedings. It may be conceded that before passing the order dated 6-2-1950, the learned Magistrate had not assumed jurisdiction in the case. But on 6-2-1950 he, on reading the police report, was obviously satisfied that there existed a dispute which was likely to cause a breach of the peace and thereupon he passed, a preliminary order summoning the parties before him. It is true that the aforesaid order (already quoted) is not a very elaborate one and does not state the grounds on which the learned Magistrate's satisfaction was based but written as it is immediately below the police report it is obvious that the learned Magistrate had accepted the police report and has been convinced by the said report that there was a dispute which was likely to cause a breach of the peace. The learned Magistrate's omission to draw an elaborate order stating the grounds of his being satisfied is by no means fatal to the case. It is an irregularity which can be condoned under section 537, Cr. P. C. The Full Bench case of -- 'Kapoor Chand v. Suraj Prasad', AIR 1933 All 264. (A) is an authority for the proposition that if a Magistrate is satisfied that a dispute likely to cause a breach of the peace exists he is seized of jurisdiction to take action and that it is immaterial if he, after being so invested with power to act under Section 145, Cr. P. C., commits an irregularity by not expressly stating in his order the grounds which satisfied him about the existence of a dispute of the aforesaid nature. This Full Bench case is binding on me and, therefore, the brief nature of the order dated the 6-2-1950, is, in my opinion, a mere irregularity which does not vitiate the order. The fact remains that the learned Magistrate was satisfied on 6-2-1950, about the existence of a dispute which gave rise to an apprehension of a breach of the peace, that he did acquire jurisdiction to act under Section 145, Cr. P. C. and that from that date onwards the proceedings were valid and legal. The previous illegal order of attachment did not invalidate the subsequent proceedings which were totally independent of that order. An order of attachment is not the basis of subsequent proceedings and in quite a large number of cases no occasion may arise for passing the attachment order at all. It is an order totally separate from the rest of the proceedings and any illegality in this order does not contaminate the rest of the proceedings. It is also significant that there is no suggestion whatsoever that the subsequent proceedings have in any way prejudiced any party or have occasioned a failure of justice. I am, therefore, of the opinion that the proceedings which consisted of filing of the written statements, recording of evidence, hearing of arguments & delivery of judgment were perfectly legal and valid proceedings.

5. The learned Sessions Judge has relied on two recent decisions of this Court. One of them is reported in -- 'Khangar v. Jhamman', AIR 1950 All 734(B). This is a decision by Harish Chandra, J. In that case the Magistrate had delegated to the police authorities not only the power to be satisfied about the existence of a breach of the peace and to make the attachment, if so satisfied, but had also

entrusted to the said authorities the power to summon the parties and to direct them to appear before him. The summoning of parties and directing them to put forward their claims for possession is an integral part of the preliminary order which it is the learned Magistrate's duty to pass under Section 145(1), Cr. P. C. Delegation of this power to the sub-inspector is a serious illegality. It will thus appear that in that case the parties had been summoned before the learned Magistrate without his having satisfied himself that there existed a dispute likely to cause a breach of the peace. In other words, the learned Magistrate had not acquired jurisdiction to act under Section 145, Cr. p. C., by the time the police authorities summoned the parties to appear before him. This circumstance distinguishes this case from the present case. As already stated, the learned Magistrate had, in the present case, himself summoned the parties after satisfying himself that a dispute likely to cause a breach of the peace really existed.

6. The second case on which the learned Judge has taken stand is reported in -- 'Babu Ram v. Ram Prasad', 1951 All W. R. (H.C.) 58 (C). In that case also the Magistrate had called for a report from the police authorities and had authorised the Station Officer to make an attachment if there was an apprehension of a breach of the peace. But there was also a finding that even after the receipt of the police report the Magistrate did not apply his mind as to whether or not there existed a dispute likely to cause a breach of the peace. Bhargava, J. observed as follows:

"In the next place, he (Magistrate) acted without jurisdiction when he initiated the proceedings on a police report which did not make any reference to the existence of any dispute: likely to cause breach of the peace without applying his mind at all."

In view of this circumstance this case is also distinguishable.

7. There is nothing in either of the aforesaid two cases to indicate that mere invalid attachment is sufficient to vitiate all the subsequent proceedings which are taken after the passing of an order under Section 145(1), Cr. P. C. I am, therefore of the opinion that the learned Magistrate's order declaring the opposite party to be in possession and forbidding Vidya Ram to interfere with his possession should not be disturbed.

8. There remains to see whether any order is needed to set aside the illegal attachment. In that connexion, I notice that the learned Magistrate himself put an end to that attachment by ordering the release of the property in favour of the opposite party. Therefore, no further order-is called for in that respect.

9. In the circumstances the reference is rejected.