

Khangar vs Jhamman And Anr. on 3 August, 1950

Equivalent citations: AIR1950ALL734, AIR 1950 ALLAHABAD 734

ORDER

Harish Chandra, J.

1. Opposite party 1, Jhamman, instituted a complaint against the applicant Khangar and others under Section 145, Criminal P. C., alleging that he was a tenant on behalf of the Zemindar and that the opposite parties wanted to take forcible possession over the standing crops in his field. The learned Magistrate after, considering the evidence came to the conclusion that Jhamman was in fact in possession of the plot in dispute and was entitled to retain possession over it and made an order accordingly. Khangar went up to the Sessions Judge in revision and his revision application was dismissed by the Additional Sessions Judge of Budaun. Be has now come to this Court in revision.

2. The contention on behalf of the applicant is a technical one. It is said that the proceedings were not properly started by the learned Magistrate and that he had no jurisdiction to try the case. It is pointed out that he did not, when the case was instituted in his Court, make any preliminary order such as is required by Sub-section (1) of Section 145, Criminal P. C., and that, therefore, the proceedings that took place before him were without jurisdiction. A similar question was considered by a Full Bench of this Court in Kapoor Chand v. Suraj Prasad, 1933 A. L. J. 188 : (A. I. R. (20) 1933 ALL. 264 : 34 Cr. L. J. 414 F. B.). Reference was made in that case to the provisions of Section 537, Criminal P. C., which lays down that "a Court of appeal or a Court of revision shall not reverse or alter any order passed by a Court of competent jurisdiction on account of any error, omission, irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceeding before or during the trial or any enquiry or other proceeding under this Code."

The view taken in this case was that this section cured any error or omission on the part of a Magistrate to frame a proper order under Sub-section (1) of Section 145, Criminal P. C., provided the parties were not prejudiced thereby. It is not suggested in this case that the applicant was in any way prejudiced by the omission on the part of the learned Magistrate to record a preliminary order under Sub-section (1) of Section 145, Criminal P. C. A condition necessary for the applicability of Section 537, however, is that the Court should be one of a competent jurisdiction. In Kapoor Chand's case "(1933 A. L. J. 188 : A. I. R. (20) 1933 ALL. 264 : 34 Cr. L. J. 414 F. B.), it was pointed out that a Magistrate is seized of jurisdiction to take action under Section 145, Criminal P. C., if he is satisfied from the police report or other information that a dispute likely to cause a breach of peace exists. If he is not so satisfied he is not competent to take action under Section 145 and his proceedings would be without jurisdiction.

3. In the present case when the complaint was lodged before the Magistrate he passed an order directing that the complaint be sent to the police concerned for report as to whether there was in

fact a likelihood of a breach of the peace. The order further directed that if the police was so satisfied, it should direct the parties concerned to appear before him in person. It will be noted that in a case under Section 145 the parties are called upon to appear before the Magistrate only if he is satisfied from the police report or other information that a dispute likely to cause a breach of the peace exists. In the present case, the learned Magistrate left it to the police concerned to call upon the parties to appear before him if it was satisfied that a likelihood of a breach of the peace existed. The learned Magistrate in a sense delegated the jurisdiction which had been given to him by law to the police concerned. Such an order gave no jurisdiction to the Magistrate to take cognisance of the case. It is pointed out on behalf of the opposite party that when the parties appeared before the Magistrate and filed their written statements he recorded an order that as the police report showed that there was a likelihood of a breach of the peace, the property in dispute was to be attached by the police. It is said that this order shows that at that stage the Magistrate was satisfied on the report received from the police that there was in fact a likelihood of a breach of the peace. But that was after the parties had appeared and filed their respective written statements before the Magistrate. Section 145 requires that before a Magistrate takes cognisance of a case under that section he must be satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists, and it is only then that he can take cognisance of the case. In the present case the Magistrate took cognisance even before he was so satisfied and asked the police concerned to direct the parties to appear before him in person in case in its view a likelihood of the breach of the peace existed. The satisfaction of the learned Magistrate that a dispute likely to cause a breach of the peace exists, at a later stage in the proceedings would not give him the necessary jurisdiction to take action in a case under Section 145, Criminal P. C. In such circumstances Section 537, Criminal P. C., can be of no assistance.

4. My view, therefore, is that the proceedings that took place before the Magistrate were without jurisdiction. I accordingly allow the application, set aside the order of the learned Magistrate dated 11th January 1949 and quash the proceedings.