

Ambika Baksh Singh vs Bharosey on 5 July, 1950

Equivalent citations: AIR1950ALL731

ORDER

Misra, J.

1. This revision arises out of proceedings under Section 145, Criminal P. C. The case arose on a complaint submitted by Bharosey Pasi, opposite party, to the Home Minister, Uttar Pradesh, stating that on account of his giving evidence in a criminal case, Ambika Baksh Singh was causing interference to Bharosey's possession over his lands in Village Hathrohna, that he caused damage to his crop and that there was danger to his life. This application was forwarded to the District Magistrate, Rae Bareilly who called for a report from the Superintendent of Police and after it was submitted he entrusted the case to the Sub-Divisional Magistrate, Mahrajganj, directing that, if necessary, proceedings under Section 145, Criminal P. C., be started against Ambika Baksh Singh. The police report was in favour of Bharosey and contained a recommendation for action under Section 107, Criminal P. C. Acting on it, the Court passed an order on 21st January 1949, for issue of notice to Ambika Baksh Singh under Section 145, Criminal P. C. The parties filed their written statements on 9th April 1949. It may be mentioned that the notice sent to Ambika Baksh Singh was signed by the learned Magistrate himself. He stated in it that he was satisfied from the report of the police of thana Sheoratanj dated 29th January 1948, that there was apprehension of a breach of the peace in connection with the disputed fields of Bharosey and that it also appeared that Ambika Baksh forcibly cut and destroyed the crop. The numbers of the plots were not specified in Bharosey's application nor were the details thereof stated in the police report or the notice issued to Ambika Baksh. Subsequently, however, when the written statements came to be filed on 9th April, 1949, the complainant gave the numbers while Ambika Baksh in para 1 of his written statement denied that there was any dispute between the parties in respect of possession over any lands and averred that there was no apprehension of a breach of the peace. Subsequently, there were a number of hearings. But the case could not be taken up earlier than 15th October 1949. The parties had meanwhile summoned their evidence. The evidence on behalf of the complainant was apparently summoned for the purpose of proving that his possession was disturbed while that summoned by Ambika Baksh Singh was intended to show that no-interference was caused. The learned Magistrate thought that it was unnecessary to examine this kind of evidence in view of the fact that Ambika Baksh Singh did not advance any claim to possession of the property in dispute. He, therefore, ordered that the attached property be released and possession be delivered to Bharosey. Dissatisfied with the aforesaid order, Ambika Baksh applied for revision of the order to the learned Sessions Judge of Rae Bareilly but failed in the attempt to obtain reversal of the order and he has now come up to this Court in revision.

2. A perusal of the proceedings discloses the following: (1) There was a failure to draw up a preliminary order as contemplated by Sub-section. (1) to Section 145 inasmuch as the Sub-Divisional

Magistrate omitted to state in it that he was satisfied from the police report that a dispute likely to cause a breach of the peace existed; (2) the property in dispute was not disclosed till the written statement was filed; and (3) the request of Ambika Baksh to be allowed to produce evidence in the Court of the Magistrate was refused. 3. The sole question which arises for determination is whether the matters pointed out above should or should not in the circumstances of the case be allowed to vitiate the entire proceedings. It is urged on behalf of the applicant that since the jurisdiction of the Magistrate to take proceedings under Section 145, Criminal P. C., arose only on his being satisfied that there is a dispute concerning land and that such dispute is likely to bring about a breach of the peace, the omission to state in the order that such a dispute, as indicated above, does in fact exist to his satisfaction cuts at the root of the entire proceedings. The view taken by the Pull Bench in Kapoor Chand v. Suraj Prasad, 65 ALL. 301: A. I. R. (20) 1933 ALL. 264: 34 Cr. L. J. 414 F. B.) is a complete answer to the applicant's submission. That case arose out of an application under Section 145, Criminal P. C. The Magistrate perused the record and directed notice to issue to the opposite party according to law, Written statements were filed in the normal way and evidence was recorded in due course. Ultimately the Magistrate directed the applicant to be put in possession of the disputed property and prohibited the opposite party from interfering with it. There was no strict compliance with the provisions of Sub-section (1) of Section 145, Criminal P. C., and there were other irregularities but they were not allowed to vitiate the proceedings as they did not prejudicially affect the opposite party. The bare fact of an omission or irregularity in a matter of procedure unaccompanied by any suggestion of probable failure of justice having been occasioned thereby is, as was observed by their Lordships of the Privy Council in Abdul Rahman v. Emperor, 54 I. A. 96: (A. I. R. (14) 1927 P. C. 44: 28 Cr. L. J. 259), insufficient to invalidate the proceedings. The only test in such cases is to see if the parties had been prejudiced by the irregularity or omission complained of and, if it is found that there has been substantial justice in the case the provisions of Section 537, Criminal P. C., would permit the defect to be cured. It was observed in the Full Bench case referred to above that although the Magistrate who passed the order in the case did not strictly comply with the provisions of Section 145 (1). Criminal P. C., inasmuch as he omitted to state in writing that he was satisfied that there was a likelihood of breach of the peace and the grounds on which he was so satisfied, yet such an omission would not deprive him of jurisdiction if there is in fact no failure of justice occasioned thereby. The learned Judges pointed out that the jurisdiction of the Magistrate to take action does not depend upon the manner in which he proceeds for if he has jurisdiction he is not deprived of it merely because he adopts a defective procedure. On a perusal of the record of the case before me I am satisfied that there has been no failure of justice. The rules of procedure are not intended to hinder justice. In fact their sole object is to advance it. A mere technical defeat, therefore, in the procedure adopted by the learned Magistrate in the absence of prejudice cannot in my judgment be availed of by the applicant. The omissions in the preliminary order were apparently cleared up in the notice issued to Ambika Baksh Singh over the signature of the Magistrate. The failure to specify the property, it would seem, did not lead to any misconception about the identity of the plots in dispute, for Ambika Baksh did not plead at any stage of the case after the filing of the written statement that he was under a misapprehension regarding the identity of the plots to which the proceedings related. There was also no irregularity in shutting out evidence in view of the files (facts?) contained in the written statement of the applicant. The application has no force. It is accordingly dismissed.