

Ram Lal Singh vs State Through Anandi Chamar And Ors. on 12 April, 1954

Equivalent citations: AIR1955ALL46, 1955CRILJ102, AIR 1955 ALLAHABAD 46

JUDGMENT

Asthana, J.

1. This is a reference by the learned Additional Sessions Judge of Jaunpur recommending that the order dated 29-10-1951 passed by the Sub-divisional Magistrate of Shahganj district Jaunpur for the release of the attached property in favour of the first party, i.e., Anandi Chamar and others, be quashed.
2. The proceedings arose out of a case under Section 145, Cr. P. C. The learned Magistrate after considering the evidence produced before him came to the conclusion that there was no apprehension of a breach of the peace and he, therefore, dismissed the application under Section 145, Cr. P. C. He, however, proceeded to decide the question of possession and found that the first party was in possession of the property on the relevant date, i.e., within two months of the preliminary order and it was from his possession that the attachment was made. He passed an order that the attached property might be released in favour of the first party. Against this decision the second party filed a revision.
3. The learned Sessions Judge has found that the learned Magistrate had no jurisdiction to pass the order after he had come to the conclusion that there was no apprehension of a breach of the peace and the proper order which should have been passed by him after coming to this finding was that he should have dismissed the application and quashed further proceedings. He has also found that the learned Magistrate had no jurisdiction to enter into the question of possession after he had found that there was no apprehension of a breach of the peace and in support of his view he has relied on several decision's mentioned in his Judgment. The learned Magistrate in his explanation relied on a decision of the Nagpur High Court; but the reference of this case has been wrongly given by him. He has mentioned -- 'State v. Sheoratan Singh', (AIR 1951 'Nagpur, pages 56 to 59) instead of AIR 1951 Nag 201 (A)).
4. I have heard the learned counsel for the parties. The only question for determination is whether the learned Magistrate had any jurisdiction to decide the question of possession after he had found from the evidence produced before him that there was no apprehension of a breach of the peace.

5. In 'Rajdeo Singh v. Emperor', AIR 1948 All 425 (B), it was held by Agarwala, J. that when proceedings were dropped under Section 145 (5), Cr. P. C., on the ground that there never existed a dispute likely to cause a breach of the peace the Magistrate's jurisdiction to act under the provisions of Section 145, altogether came to an end, and as such he could only pass an incidental order relating to the attached property and if he entered into a minute examination as to the claims of the respective parties regarding the fact of actual possession on the date of the initial order he would be doing precisely what he was not empowered to do. It was further held by him that if from the record it appeared that the property had been attached from the possession of a certain party the Magistrate had the inherent jurisdiction to restore possession of the property to that party, as by doing so he would be restoring the status quo ante; but if there was nothing on the record to show from whose possession the property had been attached by the police, the only alternative for the Magistrate was to pass an order that the attachment of the property should be lifted without saying in whose favour the release was to be made.

6. In 'Gangadhar v. State', AIR 1952 All 580 (C), it was held by a Division Bench of this Court consisting of Sapru and Seth, JJ. that where the Magistrate found that there was no likelihood of a breach of the peace but still entered into a minute examination of the evidence and ordered that the opposite party should remain in possession of the land until evicted in due course of law, without saying that the land had been attached from the possession of the opposite party it was held that the order of the Magistrate was not a mere order of release but was an order contemplated by Section 145, Cr. P. C., and as such was an order without jurisdiction.

7. In 'Dulla v. State', AIR 1953 All 341 (D), it was held by Nasirullah Beg J. that once it was found that there was no danger of a breach of the peace the foundation for action under Section 145, Cr. P. C., did not exist and a Magistrate had no jurisdiction to proceed further in order to decide the question of possession, that the only course open to him in such a case was to quash all proceedings under Section 145, Cr. P. C., and that he could not direct the disputed property to be released in favour of one of the parties.

8. It will appear from a consideration of the above authorities that the consistent view of this High Court has been that where the Magistrate has found that there is no apprehension of a breach of the peace he has no jurisdiction to decide the further question as to which party was in possession of the disputed property, but if from the material on the record it appeared that the property had been attached by the police from the possession of a particular party he could pass an incidental order that the attached property might be released in his favour in order to restore the status quo ante. If, however, the material on the record does not indicate from whose possession the property was attached or who was in possession of it on the date of the attachment the Magistrate after finding that there was no apprehension of a breach of the peace could not proceed further and take evidence in order to decide the question of possession.

9. In 'AIR 1951 Nag 201 (A)', it was held that where the Magistrate acting under Sub-section (5) has cancelled the preliminary order passed under Sub-section (1) of Section 145 there would be nothing wrong if he passed an incidental order cancelling the order of attachment as well. It was further held that it was but right that when the jurisdiction to act under the section was found wanting the

Magistrate should restore the status quo ante and when it was not possible to determine this status because of the difficulty in determining from whom the property was attached the appropriate order to pass was to retain the property in the custody of the court and direct the parties to have recourse to a civil court to obtain possession of the property. This decision also does not lay down that the Magistrate has got any jurisdiction to take evidence regarding the possession of the property after he has found that there is no apprehension of a breach of the peace. It is, however, doubtful if the property could be kept under attachment when the proceedings under Section 145, Cr. P. C., had been dropped after finding that there was no apprehension of a breach of the peace.

10. The learned Sessions Judge has observed that it does not appear from the police report or from any other document on the record from whose possession the property in dispute was attached. According to him the report of the police was silent as to which party was in possession at the time of the attachment though both of them were claiming possession to it.

11. In the circumstances I accept the recommendation of the Sessions Judge and quash the order of the Magistrate directing the attached property to be released in favour of Anandi Chamar and others, opposite parties, and direct that the entire proceedings under Section 145, Cr. P. C., shall stand cancelled.