

## **Jai Lal vs State Through Madhuri Saran And Ors. on 18 January, 1954**

**Equivalent citations: AIR1955ALL51, 1955CRILJ147, AIR 1955 ALLAHABAD 51**

ORDER

H.S. Chaturvedi, J.

1. This application in revision arises out of proceedings under Section 145, Criminal P. C. An application under that section was made on behalf of the applicant Jai Lal against eight persons not including the opposite party Madhuri Saran. The Magistrate called for a police report and on a perusal of that report, on 21-9-1949, he passed the following order:

"Police report perused. I am satisfied that there is an apprehension of the breach of peace. S. O. will please attach the land and crop, if any, and entrust it to some reliable sapurdar. Applicant to show the specific number of plots to the s. o."

Thereafter the attachment was made and after a report had been received from the police Indicating that the attachment had been made, the Magistrate after some delay, on 17-3-1950, passed the following order:

"I am satisfied from the police report that there exists an apprehension of breach of peace between the parties. Issue notice under Section 145, Cr. P. C., to the parties to file their written statements."

In the Hindi order of the 17th March, the date by which such written statements were to be filed was also indicated. It may be noted that Madhuri Saran had, in the meanwhile, put forward a claim that he was in actual possession of the land in dispute. Subsequently, the parties filed their respective written statements and after considering the evidence the learned Magistrate passed an order declaring Madhuri Saran to be in possession, and directed that he shall 'continue to be in such possession until evicted therefrom in due course of law'. He also forbade all interference with his possession. The attachment was directed to be withdrawn in his favour. The applicant went up in revision before the learned Sessions Judge and he dismissed his application.

2. The point urged on behalf of the applicant is that inasmuch as the preliminary order was passed on 17-3-1950, the Magistrate had no power under Section 145 to determine the question as to which party was in possession before the property was attached by the police. Section 145 requires that the Magistrate shall, after considering the evidence, decide whether any and which of the parties was at the date of the order mentioned in Sub-section (1), in possession of the subject of dispute. It is said

that inasmuch as neither party was in possession of the property on the date when the preliminary order was passed namely, 17-3-1950, the Magistrate should, acting under Section 146(1), have directed that the property was to remain attached until a competent court had determined the rights of the parties thereto, or the person entitled to possession thereof.

3. On behalf of the opposite party Madhuri Saran, it is urged that the order passed by the learned Magistrate on 21-9-1949, was in fact the preliminary order and that he was quite right in determining which party was in possession of the property on that date before it was attached by the police under the orders of the Magistrate. On behalf of the applicant, it is said that the preliminary order of the Magistrate should satisfy all the conditions laid down in Section 145(1) which requires that the order should be in writing, should state the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof and require the parties concerned in such dispute to attend his court in person or by pleader within a time to be fixed by the Magistrate and to file written statements of their respective claims as respects the actual possession of the subject of dispute. On behalf of the opposite party it is said that although the order passed on the 21st September, 1949, does not call upon the parties concerned in the dispute to attend the Magistrate's Court within a certain time and to put in their written statements etc., it should still be deemed to be an order under Sub-section (1) of 145.

4. I do not think that an order ceases to be an order under" Section 145(1) if it is defective in any small particulars. The main requirements are that the order should be in writing, that it should indicate that the Magistrate is satisfied that a dispute likely to cause a breach of the peace exists concerning any land or water etc. and also state the grounds of his being so satisfied. In the present case, the Magistrate had asked the police to submit a report. When the report was received, the Magistrate on the back of that report wrote the order which has been reproduced above and the order clearly indicates that the Magistrate was satisfied for the reasons given in the police report that a dispute likely to cause a breach of the peace existed. No doubt it is necessary that a Magistrate should properly word the preliminary order in a case under Section 145. But in every case, we have to see whether the defect is or is not a material one.

It appears that the order of 21-9-1949, was defective inasmuch as the Magistrate did not at the same time pass an order requiring the parties concerned in the dispute to attend his court in person or by pleader within a certain time and to put in written statements of their respective claims, etc. The question is whether the omission on the part of the Magistrate to incorporate this in the order makes it invalid.

In my view, the order cannot be regarded' as illegal or Invalid because of the mere omission on the part of the Magistrate to direct at the same time that the parties concerned in such dispute were to attend his court within a certain time etc. The omission no doubt amounted to an irregularity, but we have to consider whether the irregularity is such as would affect the validity of the order passed by the Magistrate. No order passed by a court of competent jurisdiction can be reversed or altered because of any error or omission or irregularity in such order, unless such irregularity has in fact occasioned a failure of justice. It is not indicated how this irregularity has in fact occasioned a failure of Justice.

The Magistrate had not the full particulars of the plots in dispute in his possession on the date on which the order was passed. After receiving the report of the station officer indicating that certain plots had been attached by him, necessary notices were directed to be issued by another order passed on 17-3-1950. No doubt the Magistrate thought that the latter order was in fact the order required by Section 145(1). But that is of no consequence. All the more important ingredients which should be included in such an order are contained in the order of 21-9-1949, and in my view that order should be deemed to be the order required by Section 145(1). The Magistrate on a consideration of the evidence found that the opposite party Madhuri Saran was in possession of the property in dispute on the date when that order was passed and the finding of fact cannot be interfered with by this Court.

5. I, therefore, see no reason to interfere and reject the application. The order staying the operation of the order passed by the Magistrate is discharged.