

Narsingh Padam Saran Shah vs Mt. Suraj Kishore Devi on 27 July, 1951

Equivalent citations: AIR1951ALL826, AIR 1951 ALLAHABAD 826

ORDER

Misra, J.

1. This is a criminal reference by the learned Civil and Sessions Judge, Partabgarh, in a revision filed before him by Raja Narsing Padam Saran Shah of Bijaigarh estate against an order of the Sub-Divisional Magistrate, Patti, District Partabgarh passed under Section 145, Cr. P. C. The learned Judge recommends that the order attaching the moveable properties in dispute be reversed.

2. The properties in dispute in the proceedings under Section 145, Cr P. C. include moveable properties in the shape of cash, jewellery and other articles and live stock and immoveable properties such as a house in Amargarh and villages in the districts of Partabgarh and Panaras. They belonged to Rani Indarpal Kunwar who died on 11-2-1950, at Amargarh. Whether or not the properties constitute the Rani's stridhan, it is not possible to say at this stage.

3. Dewan Rameshwar Prasad Singh, taluqdar of Amargarh who was the first party in the proceedings under Section 145, Cr. P.C. has since died and is now represented by his widow, Mt. Suraj Kishori Devi. He is the Rani's nephew, being her brother's son. He claimed the property as stridhan, heir of the deceased. Raja Narsing Padam Saran Shah, the second party is the owner of Bijaigarh estate in the district of Mirzapur. He is the step-son of the late Rani, being born of the womb of her husband's second wife, Rani Brij Khan Kunwar.

4. Rani Indrapal Kunwar died, as stated above on 11-2-1950. Before her dead body could be cremated, there was a scramble for possession of her estate between Dewan Rameshwar Prasad and a number of other claimants. The Dewan applied on 12-2-1950, to the Sub Divisional Magistrate, Patti, for proceedings being taken under Sections 107, 145 and 154, Cr. P. C. and for appointment of a receiver of all the properties, moveable as well as immovable and the matter being urgent, the Sub Divisional Magistrate forthwith ordered the station officer, Patti, to proceed to the spot along with the tahsildar in order to ensure that the body was allowed to be cremated without any breach of the peace. He ordered further that if it be necessary, in order to prevent a breach of the peace, he might attach the property according to law in the presence of the parties. An order of a like nature was also sent to the tahsildar directing him to accompany the station officer and to do the needful according to law. It would seem that between the night of 12th and 13th February, the Rani's step-son, Raja Narsing Padam Saran Shah had also arrived at Amargarh. He broke open some of the locks in the kot and removed valuable articles utensils, clothes etc. in a number of boxes to a station wagon which he had brought with him ostensibly to take the dead body for cremation to Banaras. While the

loading was in progress, the station officer and the tahsildar of Patti reached the spot. They found that the situation was fairly grave and they therefore proceeded to attach the house with all its moveables. He unloaded the station wagon and with the consent of the parties replaced the boxes and other moveables inside the house and sealed the rooms. It may be mentioned that the Sub-Divisional Magistrate and the Deputy Superintendent of Police had already arrived before the removal of the articles from the station wagon to the house and it would appear that the learned Magistrate was apprised of the situation and he directed the attachment as the order recorded by him on the station officer's report regarding the attachment of the house would show:

"I have already authorised the S. O. to attach the property of the deceased under Section 145, Cr. P. C. to prevent a breach of peace. I am fully satisfied that there is great danger of the breach of the peace from the report of the S. O. and from the information. The entire property of the deceased will be attached under Section 145, Cr. P. C. The main dispute is between Dewan Sahib of Amargarh and Raja Sahib of Bijaigarh. I have asked both the parties not to take the law in their hands. Raja Sahib Bijaigarh requests that further attachment list should be made after disposing of the dead body and after ceremonies and Badri Prasad assures me that they will not take the law in their hands. This is reasonable. For the present all the doors be looked and sealed in the presence of the representatives of the parties and the list of attachment be prepared after the return of Raja Sahib and till he is free from the after death ceremonies. Have a watch that nothing untoward happens. After attachment the parties will be asked to file written statements in respect of their claims."

The prompt action taken by the authorities averted the apprehended breach of the peace and the body was allowed to be cremated more or less in a peaceful atmosphere.

5. The proceedings subsequent to 13-2-1950 are not of much importance. On 24-2-1950 the Raja and Dewan Rameshwar Prasad were invited to file their respective claims in Court on 21-3-1950. On the latter date the Raja complained that the notice did not contain any details. He prayed that he should be told under what provisions of law he was being deprived of the property of his step-mother and he also sought to be allowed to inspect the papers connected with the previous orders. His counsel was shown the relevant papers and he was thus informed of the law under which the proceedings were being taken. The parties filed their written statements on 26-4-1950. The Raja objected to the order of attachment on the ground that it could not be passed in the absence of a preliminary order. He also questioned the legality of the attachment of moveable properties. Before the evidence could be given, he again moved the Court on 6-10-1950, praying that the moveables be released in his favour and pointed out that the proceedings under Section 145, Cr. P. C. were wholly unwarranted. This application was rejected by the learned Magistrate on 8-11-1950. The proceedings in the Court of the Sub-divisional Magistrate have since remained stayed because the Raja went up in revision against the order of rejection to the Court of the learned Civil and Sessions Judge Partabgarh and obtained a direction for staying them.

6. Two of the points taken in the objections before the learned Judge were: (1) That there was no preliminary order as contemplated by Section 145 (1), Criminal P. C. and the omission rendered the

proceedings void, and (2) that the learned Magistrate had no jurisdiction to attach moveable properties. There was a third point also but since that matter is no longer persisted in this Court, it is unnecessary to mention the third ground of objection or the facts relating thereto. The contention based on the absence of the preliminary order does not seem to have been pressed before the learned Judge. It was not discussed in the course of his judgment. It was held that the word 'land' and 'water' occurring in Section 145, Criminal P. C., did not include moveable properties and the learned Magistrate had no jurisdiction to attach them. He, therefore, made the recommendation mentioned above.

7. In the course of his arguments in this Court, the applicant's learned counsel has tried to press the reference both on the ground of jurisdictional defect arising out of the omission to pass a preliminary order before the attachment and the invalidity of the order in respect of the attachment of moveable properties.

8. So far as the first point is concerned, it may be noticed that the attachment of the house took place on 13-2-1950 shortly earlier in point of time than the order of the Sub-Divisional Magistrate which has been quoted above in extenso. The moveable properties, it seems clear, were looked in the building subsequently. The entire proceedings took place in the presence of the parties and I have no doubt that they were made fully aware of their nature and the properties to which they related. As pointed out by their Lordships of the Privy Council in *Abdul Rehman v. Emperor*, 54 I. A. 96), a bare omission or irregularity in a matter of procedure unaccompanied by any prejudice to the accused or failure of justice occasioned thereby would not operate to invalidate criminal proceedings if substantial justice has been done. The defect, if any, is deemed in such cases to be cured by the provisions of Section 537, Criminal P. C. The Full Bench case of *Kapoor Chand v. Suraj Prasad*, 55 ALL. 301, deals with the point more directly. That case arose out of proceedings under Section 145, Criminal P. C and the conclusion there reached was that the Magistrate's omission to record the fact or the grounds of satisfaction regarding the likelihood of a breach of the peace does not deprive him of jurisdiction. It could only amount to an irregularity and it could not result in vitiating the subsequent proceedings unless it occasions a failure of justice. See also *Asghari Khanam v. Emperor*, 11 Luck. 157.

9. In the circumstances of the present case I have every reason to think that although the learned Magistrate did not say in so many words in his order dated 12-2-1950, that he was satisfied that there was a likelihood of a breach of the peace he passed the order anticipating the trouble which in fact arose the next day. His order of 13-2-1950, definitely gives expression to the danger which he apprehended on the basis of the report of the station officer. It is obvious that the latter order stating that he was satisfied that a breach of the peace was imminent though written out by the Magistrate a few minutes after the attachment of the house did not occasion any prejudice to the parties. The jurisdiction of the Magistrate to entertain proceedings under Section 145, Criminal P. C. and to attach the property does not depend on the manner in which he proceeds. It arises from the existence of a dispute likely to occasion a breach of the peace. If the requisite circumstances exist, it is obvious that the adoption of a detective procedure will not result in vitiating the proceedings. As observed in *Ambika Baksh Singh v. Bharosey* (Cri. Rev. No. 32 of 1950) the rules of procedure are not intended to hinder justice; their sole object is to advance it. It is well-known that the object

underlying Section 145 Criminal P. C., is to provide a summary method for preventing breach of the peace. To facilitate it, the section prescribes the manner in which the parties to the dispute can be brought before the Court and the facts relating to possession ascertained from them. Till such time as the Magistrate determines the rights of the parties in respect of possession or till he refers the parties to the proper tribunal for determination of their rights the law empowers him to take the property in his custody. So long as the purpose is achieved without causing any prejudice to the disputants, minor defects have to be ignored for too rigid an adherence to the letter of the law is not always possible where the situation imperatively demands speedy action, The first objection has no substance and must be overruled.

10. As regards the attachment of moveable property it has to be noticed that the boxes, utensils and other articles which were attached along with other properties and locked up in the building had been previously taken out of the building by the Raja either surreptitiously or by force: vide the report of the station officer dated 14-2-1950. They could not be deemed, therefore, to be entirely divorced from the Rani's house of which attachment was ordered by the learned Magistrate. It has been repeatedly held that if moveable property is included within immovable property, the attachment of the latter kind of property under the provisions of Section 145, Criminal P. C., would not render the incidental attachment of moveable invalid or bad in law for they would *prima facie* belong to the person in possession of the immovable properties--see in this connection *Gokul Nath v. Baram Nath*, A. I. R. (14) 1927 ALL. 125, *Emperor v. Gaya Prasad*, I. L. R. (1947) ALL. 741, *Bharat Das v. Ram Chariter Das*, A. I. R. (3) 1916 Pat. 42 and *Prem Kaur v. Benarsi Das*, 14 Lah. 615. The position is of course different where a Magistrate while acting under Section 145, Criminal P. C., attaches movable property as such and not as part of the immovable property. As observed in the last mentioned case, it would be absurd to hold that when a Magistrate takes possession of immovable property in cases of emergency he should first remove the moveable property therefrom and hand it over to one or other of the parties before the attachment of the immovable properties is made. The learned Judges said that *Prima facie* moveable property in such cases belongs to the person entitled to the possession of the immovable property in dispute. The order passed by the Magistrate is only a provisional administrative order and does not in any way decide the rights of the parties. The order for delivery of possession of the moveable property thus can be made only after final orders under Section 145, Criminal P. C., are passed. There are no special circumstances in the case to show that the rights of the parties with respect to the immovable properties inside the building were different from the right to possession of the immovable property. The second point urged on behalf of the Raja is also futile.

11. No other contention was raised on behalf of the applicant. I reject the reference.