Parmatma And Ors. vs State And Anr. on 22 July, 1953

Equivalent citations: AIR1954ALL24, AIR 1954 ALLAHABAD 24

ORDER

Randhir Singh, J.

1. This is a reference by the Sessions Judge of Gonda recommending that an order passed under Section 145, Criminal P. C., by a Magistrate, first class, Gonda, ordering delivery of possession to Debi Prasad and Mata Prasad who were applicants in a case under S, 145, Criminal P. C. be set aside.

2. It appears that an application under Section 145 Criminal P. C., was made by Debi Prasad and Mata Prasad on 24-9-1952, on the allegations that the jondhri crop in three acres of plot No. 1238/5 had been raised by them and that the opposite party were threatening to dispossess them, and also that there was a likelihood of a breach of the peace. On receipt of this application the Sub-Divisional Magistrate, Tarabganj, made an order asking the station officer to make a report. 6-10-1952 was fixed for the receipt of this report of the station officer. Meanwhile on 29-9-1950, the Sub-Divisional Officer, Tarabganj, happened to go to Colonelganj police station and there seems to have been apprised of the facts of the case. He asked the station Officer to make a report and the report was made by the station officer on that date. He then passed an order as follows: "Attach the crop in dispute and call both parties to produce their evidence before me tomorrow at 3 p.m. and call the patwari." The order was served on the complainant as also on Jwala Prasad of the second party. Jwala Prasad and Parmatmadin, opposite parties Nos. 1 and 2, turned up before the Sub-Divisional Magistrate. They did not file any written statement. The Magistrate recorded the evidence produced by the complainants. No evidence was produced by the opposite party and final order was passed by the Magistrate ordering delivery of possession of the crop to the complainants. The opposite party being dissatisfied with the order passed by the Magistrate went up in revision to the Sessions Judge who has made the recommendation which is before me.

3. The learned Sessions Judge has in his order of reference mentioned that the learned Magistrate had no jurisdiction to proceed with the case inasmuch as he failed to make an order in accordance with the provisions of Section 145, Criminal P. C. The provisions relating to a preliminary order made under Section 145 (1), Criminal P. C. are as follows:

> "Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as

respects the fact of actual possession of the subject of dispute."

It is evident that a Magistrate should, if he is satisfied that there is an apprehension of a breach of the peace, express his satisfaction on this point in writing and he should also make an order asking the opposite party to file a written statement and produce evidence. In the present case the Magistrate on receipt of the report of the station officer did not make any order expressing that he was satisfied that there was an apprehension of a breach of the peace but simply passed an order for attachment of the property. It is now contended that this procedure adopted by the learned Magistrate was not in accordance with law and the omission to observe the provisions of Section 145(1), Criminal P. C., vitiated the subsequent proceedings in the Court of the Magistrate inasmuch as he had 110 jurisdiction to proceed with the case in the absence of an order in terms enjoined by Section 145 (1). In support of this contention, two rulings have been cited on behalf of the applicants who went in revision before the Sessions Judge -- 'Lakhpat v. Mt. Manrana', AIR 1947 Oudh 159 (A) and -- 'Abdul Aziz Khan v. Badri', AIR 1948 Oudh 184 (B).

4. In these two cases, it was held that it was obligatory on the Magistrate to pass a preliminary order under Section 145(1) expressing his satisfaction that there was an apprehension of a breach of the peace before he could acquire jurisdiction to proceed with the case. In both these cases, however, it was mentioned that there was no material also before the Magistrate from, which it could be inferred that the Magistrate was satisfied that there was an apprehension of a breach of the peace. In the earlier case, -- 'Lakhpat v. Mt. Maharana', (A), a report had been called for from the Sadar Qanungo and his report showed that there was no apprehension of a breach of the peace and still the Magistrate ordered attachment to issue. Under these circumstances evidently there was no material before the Magistrate from which it could be inferred that he was satisfied that there was a likelihood of a breach of the peace. In the other case -- 'Abdul Aziz Khan v. Badri' (B), also there was no material on the record to show that the Magistrate was satisfied of an apprehension of a breach of the peace, and it was observed by Kidwai J.: "When the Court fails to pass such an order at any stage of the proceedings end there is not sufficient material on the record on the basis of which such an order could be passed, it cannot be held that the criminal Court had, jurisdiction to take proceedings under Section 145, Criminal Procedure Code."

5. There is a case of our own High Court in which the matter came up for consideration before a Full Bench -- 'Kapoor Chand v. Suraj Prasad', AIR 1933 All 264 (C). In this reported case also the Magistrate omitted to pass a preliminary order to the effect that he was satisfied that there was an apprehension of a breach of the peace, and it was held that if it appears from the record that there was material on which the Magistrate could be satisfied; the mere omission to pass an order in explicit words would not vitiate the subsequent proceedings or take away the jurisdiction of the Magistrate : it would be a mere irregularity curable under Section 537, Criminal P. C., if it has not occasioned any failure of justice. This Full Bench case was subsequently relied upon and followed in another case of this Court in 1951 vide -- 'Narain Singh v. Mst. Suraj Kishore Devi', AIR 1951 All 828 (D). I am bound to follow the Pull Bench ruling of this Court with which, if I may say so with respect. I am also in full accord.

6. In the present case the Magistrate had gone to the police station and had asked for a report from the Station Officer. The Station Officer reported that the parties were 'sarkash wa giroband' and that peace could be established only if the attachment of the property in dispute was made. On this report of the station officer, the Magistrate made an order of attachment and also ordered that the parties may be informed and may be asked to be present on the following day. The Magistrate would not have passed this order if he had not in fact been satisfied that there was an apprehension of a breach of the peace.

No doubt he should have passed an order in explicit words that he was satisfied that there was an apprehension of a breach of the peace but this omission on the part of the Magistrate would not nullify the subsequent proceedings taken by him in view of the opinion expressed in the Full Bench case referred to above.

7. Another point taken up in revision and supported by the learned Sessions Judge is that two of the four persons who represented the opposite party in the proceedings under Section 145, Criminal P. C. had not been served. It appears that all the four persons shown as opposite parties were sons of the same father and claimed possession over the plot jointly. Service was made by the Sub-Inspector on Jwala Prasad, one of the members of the opposite party and two of them actually turned up before the Magistrate on the following day. No doubt all of them should have been served, but it appears that two of them had not actually been residing there taut were residing either at Badaun or Lucknow. They were all brothers and were presumably joint. The Magistrate seems to have been satisfied that they had been effectively represented by the two brothers before him. Both of them who were present before the Sessions Judge had the same interest in the property as the other two brothers who were not present and it appears to me that there was no question of prejudice to them if the whole of the case was represented by the two brothers who were present. It would not, therefore, be necessary to disturb the order of the Magistrate only on this ground as it appears to me that there was no failure of justice on account of this irregularity also.

8. Lastly it has been argued that the evidence on the record did not justify the conclusion that the applicants under Section 145 of the Code of Criminal Procedure were actually in possession of the crop in respect of which proceedings had been taken under Section 145. The learned Sessions Judge seems to have got confused in the names of some of the parties. Debi Prasad and Mata Prasad were the two applicants before the Magistrate while Parmatmadin, Jwala Prasad, Debi Prasad and Bachau were the opposite party. The witnesses who were examined on behalf of the applicants stated that Debi Prasad and Mata Prasad were in possession. There was no Mata Prasad in the array of the opposite parties and the witnesses could not therefore have referred to any Mata Prasad of the opposite party in their statements made before the Magistrate. Moreover, it is difficult to believe that the witnesses for the applicants should have tried to establish the possession of the opposite party. There is, therefore, no substance in the contention that the evidence produced by the applicants in the case before the Magistrate had not proved their possession. It would not be open to me to go into a question of fact on which the trial Court has come to a definite finding. There is thus no good ground for interference in the order passed toy the Magistrate and I am unable to entertain the reference made by the Sessions Judge. The reference is, therefore, rejected and the order passed by the Magistrate is maintained.