

Ram Prasad vs Banwari And Ors. on 19 November, 1954

Equivalent citations: AIR1956ALL12, 1956CRILJ3, AIR 1956 ALLAHABAD 12

ORDER

Roy, J.

1. Criminal Revision No. 459 of 1954 & Criminal Miscellaneous Case No. 1425 of 1954 relate to the same matter. They have been heard together and will be disposed of by a common judgment. On 22-3-1953, an application was moved by Ram Prasad for the taking of proceedings under Section 145, Cr. P. C., against Banwari Lal and others. That application was sent to the police for inquiry and report. The police made a report to the effect that a dispute likely to cause a breach of peace existed. Thereupon the learned Magistrate issued notices required under Section 145 of the Code.

Three days later, namely, on 25-3-1953, Ram Prasad filed a suit in the civil Court for establishing his title to the property in respect of which proceedings under Section 145, Cr. P. C. were instituted. After the filing of that suit Ram Prasad moved the Magistrate on 20-6-1953, for the stay of the proceedings under Section 145 and the ground advanced by him was that since the civil suit will determine the rights of the parties, it was not necessary that the application under Section 145 should be gone into at that stage.

The Magistrate did not stay the proceedings and called upon Ram Prasad to produce evidence that there was apprehension of breach of peace. From that order Ram Prasad went in revision before the learned Additional Sessions Judge of Ali-garh and his contention was that the Magistrate ought to have stayed the proceedings under Section 145. The learned Additional Sessions Judge dismissed the revisional application on the ground that Ram Prasad himself was the author of the proceedings under Section 145 and it was not open to him to ask the Court to stay those proceedings merely on the ground that a civil suit had been instituted.

The learned Sessions Judge observed that proceedings under Section 145 of the Code are quite independent of the proceedings in the civil Court, inasmuch as it is a question of prevention of breach of peace which is involved under Section 145.

2. Aggrieved by the order passed by the learned Additional Sessions Judge Ram Prasad filed Criminal Revision No. 459 of 1954 in this Court and he has reiterated the same points which had been urged by him in the Court of Session. Ram Prasad meanwhile died. Criminal Miscellaneous Case No. 1425 of 1954 has been made by his three sons and his widow, who have prayed that they be substituted on the record in the place of the deceased.

Even upon the analogy of Sub-clause (7) of Section 145 of the Code if these persons are brought on record as legal representatives of the deceased I am of opinion that Revisional Petition No. 459 of 1954 has got no substance behind it. After notices have been issued by a Magistrate under Section 145, Cr. P. C. when the Magistrate is satisfied from a police report or other information that a dispute likely to cause a breach of peace exists concerning any land, it is incumbent upon the Magistrate to 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 and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

The Magistrate shall then without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence as he thinks necessary, and if possible decide whether any and which of the parties was at the date of the order in such possession.

Sub-section (5) of Section 145 enacts that nothing in the section shall preclude any party so required to attend, or any person interested from showing that no such dispute as aforesaid exists or has existed, and in such case the Magistrate shall cancel his order and all further proceedings thereon shall be stayed, but subject to such cancellation the order of the Magistrate under Sub-section (1) shall be final.

The applicant bases his claim for stay upon the provisions of Section 344, Criminal P. C. That section says that if from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing stating the reasons therefor postpone or adjourn the case on such terms as it thinks fit, for such time as it thinks reasonable.

If proceedings were initiated by Ram Prasad himself under Section 145, Cr. P. C. upon the assertion made by him that there was a dispute likely to cause a breach of peace, it was not open to Ram Prasad to come forward before the Magistrate on 20-6-1953, and to ask the Magistrate to stay his hands and not to proceed with the inquiry under Section 145 merely because only three days after the initiation of the case under Section 145 a civil suit had been instituted by him.

Of course it would be open to the Magistrate under the provisions of Sub-clause (5) of Section 145 to cancel his order under Section 145 Sub-clause (1) if the Magistrate is satisfied that no such dispute as aforesaid exists or has existed. Ram Prasad created rather an anomalous situation for himself; firstly by initiating a case under Section 145, and then shortly afterwards by asking the Magistrate that the proceedings should be stayed. In these circumstances I do not think that there is any merit in this revisional petition which is, therefore, rejected.

3. The three sons and the widow of Ram Prasad may be brought on record as legal representatives of the deceased for the purposes of this re-visional petition, but that will not take away the jurisdiction of the Magistrate to proceed under Section 145, Sub-clause (7), Criminal P. C.