

# The State vs Padma Kant Malviya And Anr. on 22 December, 1953

**Equivalent citations: AIR1955ALL377, AIR 1955 ALLAHABAD 377**

## JUDGMENT

Mootham, J.

This is an application filed by the City Magistrate, Allahabad, against the opposite parties Sri Padma Kant Malviya and Sri Ganesh Prasad, for taking such proceedings for contempt of the Court of the City Magistrate, as this Court may deem fit.

1. The facts of the case briefly are that Sri Padma Kant Malviya, opposite party No. 1, owns two houses situated in the same compound in Lukerganj, Allahabad. He himself is residing in one of them and had let out the other to Sri Harjiwan Das Nagar, a dealer in fountainpens. The main gate in the boundary wall of the compound is towards the south, and there are two gates towards the west. One of these two gates used to remain closed but the other one, which is nearer the residence of Sri Harjiwan Das Nagar, used mostly to remain open for egress and ingress. Close to this gate is the bungalow of Sri Baij Nath Kapoor, who in August 1949 was the President of the Allahabad City Congress Committee. Sri Nagar was a friend of Sri Kapoor, and the two were accustomed to visit the houses of each other using for this purpose the gate opposite the latter's house.

2. On 24-8-1949 there appears to have been some trouble over the closing of this gate, or wicket as it may more appropriately be called. On 25th of August Sri Nagar moved an application under Section 145, Criminal P. C. against the opposite party No. 1, alleging that there was a dispute concerning this wicket. A report from, the police was called for, an order for the attachment of the gate was made, and a date was fixed for the production of evidence by both the parties. The order attaching the gate was served on the opposite party No. 1 on 25-8-1949. It is alleged that subsequent to this date a pamphlet was printed and published in Hindi with the title 'congress janon se ek appeal' (an appeal to the members of the Congress).

This pamphlet purported to describe in some detail a dispute that took place at about 7-30 in the evening of 24-8-1949 between Sri Baij Nath Kapoor and Sri Dhara Singh, Sub-Inspector in charge of the City Kotwali, on the one hand and the opposite party No. 1 on the other. It also purported to describe another dispute that took place at about 11 in the night on the same date, when it is said that Sri Kapoor, Sri Nagar and Sri Dhara Singh had some further talk with the opposite party No. 1.

It is alleged in this pamphlet that Sri Baij Nath Kapoor was abusing his position as President of the City Congress Committee, that he had taken the Sub-Inspector of police along with him, and that he and Sri Nagar had used strong and unbecoming language against the opposite party No. 1, whose

conduct on both these occasions was that of a gentleman. This pamphlet was printed at the Abhudya Press of which the opposite party No. 1 is the proprietor and keeper and the opposite party No. 2 is the Manager.

3. Sri Nagar moved the learned City Magistrate on 2-9-1949 to report the matter to this Court, as the contents of the pamphlet purported to affect the decision of the case which had been instituted at his instance under Section 145 of the Code and was then pending before the City Magistrate. A copy of the pamphlet was sent to the learned City Magistrate himself on 3-9-1949 in a cover on which the address of the City Magistrate is said to have been in the handwriting of the opposite party No. 1.

The learned City Magistrate was not prepared to accept the contention of the opposite parties that the pamphlet was written before the institution of the case, because it contained a reference to news item published in the issue of the Leader dated 28-8-1949. The learned Magistrate thought that the pamphlet contained a version of the happenings of an event which was 'sub judice', and that its publication' was likely to prejudice the fair hearing of the case. He has made special reference to the passages starting with the last paragraph on page 4 of the pamphlet which, according to him, were calculated to prejudice the minds of the witnesses & of the general public against the merits of a pending judicial proceeding. In his opinion the opposite parties were guilty of the commission of a serious type of contempt of Court.

4. We have listened carefully to the argument of learned counsel for the applicant, butt he has failed to satisfy us that it had been proved in this case that there was any matter contained in the pamphlet which tended to give a version, favourable to the opposite parties, of any matter which was in issue in the proceedings before the learned Magistrate. Section 145, Criminal P. C. authorises certain Magistrates, including a Sub-Divisional Magistrate, to attach the subject of dispute and in certain circumstances to declare one of the parties to be entitled to possession thereof, provided he is satisfied that a dispute likely to cause a breach of the peace exists concerning "any land Or water or the boundaries thereof" as defined in this section. The only fact which the Magistrate has to determine is which party was in possession of the land or water on the date on which he takes cognizance of the case. He is not concerned with the legal title of either party to the subject matter of the dispute.

5. In the present proceedings we find it difficult to understand how a question of possession arises. The opposite party No. 1 is the owner of the two houses and also of the gates and wickets in the compound, and, on the material before us, there does not appear to have arisen any dispute as regards the possession of the gates. The only dispute appears to have been whether one of the' wickets in the west was to be left open at all times, so that Sri Nagar may not be put to the inconvenience of taking the longer route by passing through the main gate towards the south. The dispute was with respect to the right of Sri Nagar to pass through the wicket towards the west at any hour of the day or night, and the real question appears to have been whether he was entitled to a right of way through this wicket at all hours.

6. Assuming (but not deciding) that a dispute concerning a gate is a dispute regarding land within the meaning of Section 145 the contents of the offending pamphlet did not, in our opinion purport to

show anything concerning the possession of any party over the wicket. On the other hand, they go to show that the opposite party No. 1 leaves the wicket gate open throughout the day, and that at night he hands over the key to a servant of his in order that it may be opened whenever there was need for doing so.

Neither did the pamphlet purport to say that the opposite party No. 1 had a right to keep the wicket gate closed whenever he liked. It only gave a justification for keeping it generally closed in the night, taking care at the same time to see that nobody was inconvenienced by locking up the wicket gate in the night. There was thus nothing in this pamphlet which, in our opinion, could be said to be likely to prejudice the decision of any question that could properly arise in a case under Section 145 of the Code.

7. The learned Deputy Government Advocate, who appeared for the applicant, conceded that on the evidence on the record in this case he was not able to show as to what matter in dispute in the proceedings under Section 145 was likely to be prejudiced by the printing and publication of the pamphlet; but he asked that the record of the proceedings of the case be summoned from the Magistrate's Court.

We refused to grant this prayer because the case has been pending in this Court for a very long time, and the applicant should have been ready with all the material that he wanted to produce. NO satisfactory explanation was offered for not summoning the record before the date of the final hearing, nor are we satisfied that any useful purpose would be served by summoning this record.

In our view proceedings, trivial in themselves, have been given undue prominence, and we do not think that this is a case in which any action should be taken against the opposite parties.

8. We, therefore, dismiss the application, but in all the circumstances of the case, make no order as to costs.