Nageshwar Singh And Ors. vs State Through Sitala Bux Singh And Ors. on 18 February, 1952

Equivalent citations: AIR1953ALL471, AIR 1953 ALLAHABAD 471

ORDER

Beg, J.

1. These are two applications in revision arising out of two connected cases relating to Section 145, Criminal P. C. It would appear that on 28-2-1940, Sitala Bakhsh Singh and Mata Prasad Singh gave two applications under Section 145, Criminal P. C. The first application was against three persons, Ram Sunder Singh, Nage,shwar Singh and Indra Singh. The second application was against the said three persons and two more, Shambhu Singh and Kamta Singh. In both the applications the applicants made a clear statement that there was a danger of a breach of the peace. Two applications were given because the dispute in the two cases related to different plots of land. On the same date, the learned Magistrate before whom the applications were given called for a report from the police by the following order:

> "Please report if there is an apprehension of breach of such a nature which you are unable to prevent. How many applications have been filed about this in your police station? If there is an apprehension, the land in suit may be attached."

On 6-3-1950 a report was received by the Station Officer stating that the applicant Sitla Bakhsh Singh had obtained a decree against the opposite party Nageshwar Bakhsh Singh. It was also said that Nageshwar Bakhsh Singh was a turbulent person and that it was necessary to bind him down. The report further mentioned the fact that the police had attached the property in dispute. On receipt of this report, the learned Magistrate did not pass the usual order under Section 145 (1), Criminal P. C. stating that he was satisfied that a dispute likely to cause a breach of the peace existed. On 27-3-1950, written statements were filed by the parties and 3-5-1950 was fixed for evidence. Before taking evidence, however, on 3-5-1950 the learned Magistrate passed a formal order which runs thus :

> "Whereas I am satisfied that there is an apprehension of a breach of peace between the contending parties, I hereby call upon both of them to file their respective claims and give evidence for possession of the land in suit under Section 145, Cr. P. C. Land to remain attached."

After passing the said order, he took the evidence of the parties and finally came to the conclusion that the applicants were in possession of the property in dispute in both the cases and passed an

order under Section 145, restraining the opposite parties from obstructing the applicants' peaceful possession of the property in dispute. He also withdrew the order of attachment made in favour of the applicants and forbade the opposite parties from interfering with the possession of the applicants.

2. The opposite parties went in revision before the learned Temporary Civil and Sessions Judge, Partabgarh, who upheld the findings of the learned trial Court and dismissed the application. The opposite parties aggrieved with the said order have filed two revision applications in this Court. The learned Counsel appearing on their behalf has argued three points in favour of the contention that the order passed by the lower Courts should be upset.

3. The first argument of the learned Counsel for the applicants is that there was no material before the trial Court for coming to the conclusion that there was an apprehension of a breach of the peace. I find myself unable to accept this argument as a clear statement that there was a danger of a breach of peace between the parties was made by the applicants in the application. Further there was ample material for such conclusion in the police report which stated that as Nageshwar Bakhsh Singh was a turbulent person, and that it was necessary that he should be bound down. The question whether there was sufficient material for the trial Court to come to the conclusion that there was danger of a breach of the peace is not for the Court at this stage to determine. It is for the Magistrate concerned to come to a conclusion on the material before it whether such a dispute exists. However scanty the material might be, the trial court is the proper forum for the purpose of determining this fact. I am accordingly of opinion that this question should not be allowed to be agitated at this stage.

In this connection, the learned Counsel for the applicants has further argued that as soon as the police submitted its report the Magistrate did not give the necessary finding under Section 145 (1), Criminal P. C. that there was an apprehension that a dispute likely to cause a breach of the peace, existed. It is true that strictly speaking it would have been better if the Magistrate came to a finding at that stage, but in my opinion the fact that he gave the finding subsequently before the evidence began would not vitiate the entire proceedings provided that the opposite party was not prejudiced thereby and provided further that there was material on record indicating that there were sufficient grounds for the Magistrate to pass the order in question. As the order was passed by the Magistrate before the evidence started in the case, there could be no question of prejudice. At the, most, it can only be treated as a procedural defect which in my opinion would be curable under the provisions of Section 537, Criminal P. C. In a Full Bench case of the Allahabad High Court reported in -- 'Kapoor Chand v. Suraj Prasad', AIR 1933 All 264 (FB) (A) it was laid down that the, jurisdiction of a Magistrate to take action under Section 145, Criminal P. C. arises from the fact that he has received certain information from which he is satisfied that there is a dispute likely to cause a breach of the peace. The jurisdiction of the Magistrate does not depend on how he proceeds. If he has jurisdiction, he is not deprived of jurisdiction merely because his procedure is erroneous or defective. His omission to follow certain directions contained in the Code cannot be said to deprive him of jurisdiction. Reference in this case was also made to the Privy Council case reported in -- 'Abdul Rahman v. Emperor', AIR 1927 P C 44 (B). In -- 'Bibi Asghari Kha-nam v. Emperor', AIR 1935 Oudh 316 (C) on a difference between two Judges of the late Chief Court of Oudh the question was referred to a third Judge --King C. J., who agreeing with Srivastava J., held that when a Magistrate

has ample ground for apprehending a breach of the peace and he issues an order under Section 145, Sub-section (i) the mere omission to frame his order in accordance with law is cured by Section 537 as no failure of justice is caused. Reliance in, this case was also placed on the Full Bench decision of the Allahabad High Court as well as on the Privy Council case mentioned above. In -- 'Mrs. V. E. Argles v. Chhail Behari', AIR 1949 All 230 (D) it was held that where the Magistrate has substantially complied with Section 145 (1) and the order shows that the parties have in no way been prejudiced, the omission to draw up a formal order in terms of Sub-section (1) of Section 145 would not invalidate the order.

In this particular case, it may be mentioned that it has not been argued on behalf of the applicants that they have been prejudiced in, any manner nor could such an argument have been advanced in view of the circumstances of the, case. Further the grievance of the applicants is not that there is no order of the Magistrate that dispute likely to cause a breach of the peace existed but the only grievance is that the order should have been passed at an earlier stage. It appears to me that a defect of this kind in the absence of any prejudice does not go to the root of the matter and would not vitiate the entire proceedings.

(3a) The learned counsel for the applicant has relied on -- 'Khangar v. Jhamman', AIR 1950 All 734 (E). In this case, the Magistrate's order was that if the police was satisfied it should direct the parties to appear before him in, person, it was, therefore held that the Magistrate had delegated his jurisdiction to the police officer a procedure which was not permissible under law. In the present case it cannot be said that on this essential matter there: was any delegation of its function by the Court to the police. The learned Counsel further relied on -- 'Babu Ram v. Ram Prasad', 1951 All W R 58 (F). The judgment in this case does not show that there was any order by the Magistrate to the effect that there was in existence any dispute likely to cause a breach, of the peace. It was also found that there was no material upon which such a finding could be based and the Court had not applied its mind to this aspect of the matter. The circumstances of the present case are quite different from the circumstances of that case. Lastly reliance has been placed upon a case reported in -- Mt. Ram Piari v. Dankua', AIR 1949 All 402 (G) in which it was laid down that a Magistrate acquires jurisdiction to proceed under Section 145 only when there is a likelihood of a breach of peace. If there is material before a Magistrate upon which he feels satisfied that there is likelihood of a breach of peace, an omission to record a formal order as required by Section 145 (a) may be treated as a mere irregularity which can be, cured under Section 537, Cr. P. C. In the present case I am of opinion that there was material on record before the trial Court to enable it to arrive at the finding at which it arrived, and this ruling therefore, instead of helping the applicants go against them.

4. The third argument of the learned Counsel for the applicants is that the finding of possession given by the trial Court is not justified. The trial Court in coming to its finding relied on the oral evidence adduced on behalf of the applicants, entries in the khasra of 1356, the decree passed by the revenue Court in favour of the applicant and other pieces of evidence. This finding has been upheld by the appellate Court. I see nothing perverse or erroneous in their finding. At any rate there is nothing so wrong in their finding as to attract the jurisdiction of this Court at the stage of revision and to persuade it to reverse the concurrent finding of both the lower Courts.

5. Having heard the learned Counsel for the parties I am of opinion that there is no substance in these revision applications which are accordingly dismissed.