

## **Autar Singh And Anr. vs State on 20 January, 1954**

**Equivalent citations: AIR1954ALL461, AIR 1954 ALLAHABAD 461**

ORDER

Roy, J.

1. This is an application in revision by Autar Singh and Sewan Singh against an order dated 26-2-1952, passed by the learned Sessions Judge of Dehra Dun in proceedings under Section 197, Criminal P. C.

2. The case started on the complaint of one Ringhna. He alleged in the complaint that he was a tenant of certain plots of land in village Archadea Grant; that on 25-7-1949, he had borrowed a certain sum of money from one Bakshi Amar Nath and had given the land to him for three years ending with Rabi 1358 Fasli; that on 9-5-1951, he had repaid the entire loan and Bakshi Amar Nath had put him back into possession of the land, and that when, he wanted to cultivate the land the applicants objected and became ready to use force.

The complaint was filed before the Sub-Divisional Magistrate, Dehra Dun, who called for a police report. The Station Officer, Kotwali, reported that there was a dispute between Ringhna on one side and the applicants on the other and there was a likelihood of the breach of peace. He recommended that action be taken under Section 145, Criminal P. C. On that report the Sub-Divisional Magistrate ordered that as there was a likelihood of a breach of peace, the land be attached. He directed the parties to file their written statements in the court of the City Bench of Magistrates, First Class, and transferred the file to that court for disposal.

3. In that court a question arose as to whether proceedings were to be taken under Section 145 or under Section 107, Criminal P. C. The learned Bench of Magistrates, after hearing counsel for the parties, decided on 16-8-1951 that they should proceed under Section 107, Criminal P. C. and not under Section 145. Notice under Section 107 was, therefore, issued and read out to both the applicants and they were required to furnish personal bonds for Rs. 2000/- together with two sureties for Rs. 1000/- each. That order was confirmed after evidence had been gone into.

4. The first question which has been urged before me is that the case having been started under Section 145, Criminal P. C., it could not have been converted into one under Section 107 of the Code, and that the proceedings were consequently without jurisdiction. The argument is that an application had already been made under Section 145 and that admittedly the dispute relates to immovable property. This argument was on the strength of a decision in -- 'Balajit Singh v. Bhoju Ghose', 35 Cal 117 (A), where it was held that in such cases the court is compelled by the terms of Section 145 to go on with the trial and the directions in that section are mandatory. It is undoubtedly

true that in that case it was held by the Calcutta High Court that Section 145--proceedings cannot be converted into proceedings under Section 107 of the Code. The view taken in the Calcutta High Court was, however, dissented from by this Court in -- 'Emperor v. Thakur Pande', 34 All 449 at p. 450 (B) and later by a Full Bench of the same court in -- 'Emperor v. Abbas', 39 Cal 150 (C). In -- 'Madho Singh v. Emperor', AIR 1942 Pat 331 (D), the view taken in -- '39 Cal 150 CO', had been approved. And the same view was approved of by the Nagpur High Court in -- 'Shamrao Deorao v. Emperor', AIR 1948 Nag 76 (E). It is, therefore, obvious that in the present case the proceedings under Section 107, Criminal P. C. were not without jurisdiction.

5. It was next contended that the court should not have given any finding as to the rights of the parties and that in any case proceedings ought to have been taken against both the sides. A similar question was considered by the Nagpur High Court in -- 'AIR 1948 Nag 76 (E)', cited, above.

In a case where there is a dispute concerning land it is proper to take action against both sides if Section 107, Criminal P. C. is to be resorted to because binding over one party puts the other at an advantage. But it cannot be said that the court should not investigate the title and the facts about possession of the parties. Such an inquiry falls legitimately within the purview of a criminal court acting under Section 107, Criminal P. C. because the court had to find out who is the aggressor and who has the right on his side. Such an inquiry into the title may be out of place under Section 145 proceedings which are mainly concerned with the maintenance in possession of a person dispossessed within two months of the passing of the preliminary order, but they cannot be said to be out of place where action is not taken under that section but under Section 107 of the Code.

Sub-section (10) of Section 145 of the Code, which was introduced by the Amending Act (No. 18 of 1923), provides that nothing in this section shall be deemed to be in derogation of the powers of Magistrates to proceed under Section 107. It was, therefore, within the discretion of the Magistrate to proceed either under Section 145 or under Section 107 or under both the sections of the Code.

6. In my opinion, therefore, the courts were perfectly justified in finding put the respective rights of the parties and also in giving a finding as to the fact of possession. The order passed by the court below is correct. There is no force in this revision application which is accordingly rejected.