Bhaggo Singh vs Sanoman Singh And Ors. on 13 July, 1953

Equivalent citations: AIR1954ALL13, AIR 1954 ALLAHABAD 13

ORDER

Randhir Singh, J.

1. This is a reference by the Additional District Magistrate of Bahraich recommending that the order passed by the Sub-Divisional Magistrate, Bahraich releasing property which had been attached in proceedings under Section 145, Cr. P. C. in favour of the opposite-party be set aside and it be ordered that the property may continue in attachment.

2. It appears that there was some dispute relating to some cultivatory land and Bhaggoo Singh made an application asking the Court. to take proceedings under Section 145, Cr. P. C., against the opposite-party Sanoman Singh and others. On receipt of this application the Magistrate called for a report from the police and this report was submitted by the police on 6-9-1951. The police reported that the Opposite-party were influential people and that in the year 1939 there had been rioting for the possession of this property in which two persons had been killed. The culprits were prosecuted and were sentenced to imprisonment. The police also reported that the property should be attached as there was an apprehension of a breach of the peace if the property was not attached. On receipt of this report of the police the Magistrate ordered attachment of the property and issued notice to the opposite party to file a written statement in respect of actual possession, of the subject matter of the dispute. The case dragged on, it appears, and finally came up for hearing on 20-5-1952, when the opposite party did not appear. They were also not represented by any Counsel and the Magistrate passed the following order :

> "Case called out. Bhaggu Singh is present but the Opposite-Party is neither present nor represented despite due notice for appearance today.
>
> There does not appear any genuine need of proceeding with the case under Section 145, Cr. P. C. now. Let the attached property be released in favour of the party from whose possession it was attached by the police."

Direction was sent to the police to execute the order passed by the Magistrate and the police reported on the 12th June, that there was no record in the office as to who was in possession and that both parties claimed possession. It also reported that there was an apprehension of a breach of the peace. On 18-6-1952, Khannan Tewari, one of the opposite-parties, made an application asking for delivery of possession of the property in his favour as he had been in possession of the property before the same was attached by the Court. On the presentation of this application the Magistrate asked for a fresh report from the police and a report was submitted by the police on the 19-6-1952.

In this report it was mentioned that the police found Sanoman Singh and others harvesting paddy and they had been asked to keep their hands off pending orders of the Court. The police also reported that the land belonged to Saraswati Singh and Khannan Tewari and others were sub-tenants. The Magistrate then passed an order releasing the property in favour of the opposite party and suggesting to the Station Officer that he might move for proceedings under Section 145, Cr. P. C. afresh if there was an apprehension of a breach of the peace. This order was passed on 9-7-1952. Bhaggoo Singh then went in revision to the Additional District Magistrate who after considering the proceedings taken in this case has recommended that the order passed by the Magistrate may be set aside as it was illegal and the attachment of the property may be ordered to continue.

3. A number of rulings have been cited in support of the contention that the recommendation of the Additional District Magistrate asking for a cancellation of the order of release was not a proper recommendation inasmuch as such an order could not be passed. It may not be necessary to refer to all these authorities in the view that I propose to take in this case. It appears to me that the order passed by the Magistrate on 20-5-1952, was not a proper order. The. mere fact that the opposite party was absent or did not come forward to show cause would be no justification for the Magistrate to dismiss the proceedings or to come to the conclusion that there was no apprehension of a breach of the peace. Two rulings have been cited on behalf of the opposite-party in support of the contention that it is always open to a Magistrate who has ordered attachment of property under Section 145, Cr. P. C. to withdraw the attachment or cancel the order of attachment if he is satisfied that there was no longer any apprehension of a breach of the peace, Vide -- 'Manindra Chandra v. Barada Kanta', 30 Cal 112 (A) and -- 'Narasayya v. Venkiah', AIR 1925 Mad 1252 (B).

A perusal of these rulings shows that a Magistrate has a right to terminate proceedings under Section 145 if he is satisfied that there was no further likelihood of a breach of the peace or that there was initially no apprehension of a breach of the peace. It should however appear from the record that the Magistrate had satisfied himself on this point. In the present case the order of the Magistrate does not show that he had received any information from any source or had otherwise satisfied himself that there was initially no apprehension of a breach of the peace or that subsequently the apprehension of a breach of the peace had ceased to exist. The only ground which seems to have commended itself to the Magistrate was that the opposite party was absent. There was sufficient material on the record to show that there was an apprehension of a breach of the peace. The report made by the police on the 6th September, 1951, itself shows that sometime before there had been rioting in respect of this land which had resulted in two persons being killed and the police was also of the view that there was an apprehension of a breach of peace.

There is nothing on the record to show that after this report of the police had been received the learned Magistrate had received any information or had satisfied himself that this report of the police was wrong or that the apprehension of a breach of the peace had. come to an end. It was the duty of the Magistrate to have satisfied himself either by recording evidence or otherwise if he wanted to terminate the proceedings under Section 145, but, he does not seem to have done either and seems to have dealt with the case more or less as a civil matter where one of the parties was absent and case was not proceeded with. This order could have been passed only if the Magistrate

had done something to satisfy himself that there was no further apprehension of a breach of the peace. The order passed by the Magistrate was therefore not a proper or valid order and should therefore be set aside.

4. The subsequent proceedings taken in furtherance of this order would automatically fall through and need not therefore be considered in detail.

5. As a result the recommendation made by the learned Additional Magistrate is accept ed to this extent that the original order of the Magistrate dated 20-5-1952, terminating the proceedings under section 145 of the Code of Criminal Procedure is set aside. The file will go back to the learned Magistrate who will proceed from the stage before which the proceedings were terminated according to law.