

Shiamsundar Lal Jain vs Sheo Parshad on 14 October, 1952

Equivalent citations: AIR1953ALL505, AIR 1953 ALLAHABAD 505

ORDER

Beg, J.

1. This is a reference by the learned Sessions Judge of Dehra Dun recommending that the order of the trial Court attaching the property in dispute under Section 146, Criminal P. C. be set aside. It would appear that in Dhamanwala Bazar, situate in the district of Dehra Dun, there is a shop and above the shop there is a Chaubara with a balcony belonging to Colonel Kunwar Shamsheer Bahadur Singh. One Sheo Prasad Goel, a student of the D. A. V. College claimed to be the tenant of the said Chaubara and balcony. He moved an application under Section 145, Criminal P. C. alleging that he had allowed one Shiam Sunder Lal Jain, a hardware merchant, to carry on his business in the said Chaubara and balcony. He further alleged that subsequently he had withdrawn his permission and Shiam Sunder Lal forcibly dispossessed him from his Chaubara and there was a danger of a breach of the peace in respect of it. The second party, Shiam Sunder Lal, put in a written statement alleging that in fact he himself was a tenant of the property in dispute and had allowed Sheo Prasad Goel to use the balcony for the purposes of study so long as it did not interfere with his professional work.

After the filing of the written statements by the parties, the learned Magistrate recorded the statements of ten witnesses on behalf of Sheo Prasad after which the applicant closed his case. The evidence of Shiam Sunder Lal was then, begun. After recording his examination-in-chief and before his cross-examination started, the learned Magistrate proceeded to pass the following order under Section 146, Criminal P. C. "Each of the parties claims to be in possession and alleges that the other was allowed temporary use of the room. Under the circumstances each admits the other to have been in possession and the modes of possession being incompatible, it follows that no satisfactory conclusion as to possession can be reached.

I, therefore, direct under Section 146, Criminal P. C. that the property remain attached till either party obtains a decision in its favour from the civil Court."

2. The second party, Shiam Sunder Lal, being aggrieved with the aforesaid order went up in revision before the learned Sessions Judge on the ground that the provisions of Section 145, Sub-clause (4), Criminal P. C., were not complied with and the order of attachment under Section 146 was, therefore, illegal and invalid in law. The learned Sessions Judge agreed with the said contention and made this reference recommending that the order in question be set aside.

3. Having gone through the order of reference-and the explanation submitted by the learned Magistrate, I am of opinion that this reference must be accepted. Under Section 145, Sub-clause (1), Criminal P. C., once a Magistrate is satisfied that a dispute likely to cause a breach of the peace exists, he should make an order in writing requiring the parties concerned in such dispute to attend his Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statement of their respective claims as respects the fact of actual possession of the subject of dispute. After the written statements have been filed, then under Sub-clause (4) of the same section, the Magistrate is required 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 (if any) as he thinks necessary and, if possible decide whether any and which of the parties was at the date of the order before mentioned in possession of the said subject.

Thus it is evident that the Criminal Procedure Code has prescribed a definite and a comprehensive procedure to enable the Magistrate to come to a conclusion on the question of possession which is the question in issue in proceedings under Section 145, Criminal P. C. Unless the entire procedure has been gone through it is not possible for the Magistrate to come to any definite conclusion one way or the other. The provisions of Sub-clause (4) of Section 145, Criminal P. C. seem to be imperative. It is not open to a Magistrate to refuse to take evidence on behalf of a party merely on the ground that he was satisfied on the written statements filed by both the parties that a certain conclusion was the correct conclusion. It is significant that under Sub-clause (4) of Section 145, Criminal P. C. even after both the parties have adduced the entire evidence on their behalf, it is open to the Magistrate to act 'suo motu' and to summon any fresh evidence in order to enable him to determine the question as to which party is in actual possession of the subject of dispute. Before the Magistrate can take any action 'suo motu' it will be helpful to him to have the entire picture of the case as appearing from the evidence of both the parties.

Proceedings under Section 145 are proceedings of a criminal nature and are resorted to only when there is a danger of breach of peace. The policy of the Legislature seems to be to encourage their speedy disposal and the arrival of some definite conclusions on merits by the trial Courts so as to avoid the apprehended breach of peace. If after having exhausted every avenue of enquiry and investigation open to a Magistrate under Section 145, Criminal P. C., he still fails to come to any definite conclusion regarding the merits of the case, then and then alone, as a last resort, he can invoke the aid of Section 146, Criminal P. C. and state that having been unable to satisfy himself as to which of the parties was in possession of the subject of dispute, he has no other alternative but to attach the property until the matter was decided by a competent Court. It may also be mentioned that in Court Shiam Sunder Lal has not admitted that he was out of possession. On the other hand, he has stated that "I was in possession till the police sealed the room..... I allowed Sheo Prasad to study here during March on the understanding that he would not interfere with my work. He never had possession of the room."

He further goes on to state that his tools were kept in the room all along, that he had got the entire premises white-washed and had retained the key of the room with him. I should not, however, be taken to express any opinion on the merits of the case of either party. I, however, feel that the matter

needs clarification by further investigation and the order shutting out evidence is not warranted.

4. I, accordingly, accept the reference, set aside the order of the Magistrate and direct that he shall hold an enquiry in accordance with Section 145, Criminal P. C. and pass final order after complying with the procedure prescribed therein.