

## **Abdul Rauf vs Mohd. Shafi And Ors. on 13 October, 1955**

**Equivalent citations: AIR1956ALL337B, 1956CRILJ663, AIR 1956 ALLAHABAD 337(2)**

ORDER

V.D. Bhargava, J.

1. This is a reference by the learned Sessions Judge of Pratapgarh arising out of a proceeding under Section 145, Cr. P. C.

2. Abdul Rauf moved an application under Section 145, Criminal P. C. before the Sub-Divisional Magistrate Patti that there was danger of breach of the peace with respect to plot No. 983/3 in which there also existed a house. The learned Magistrate called for a report and the police on the 26th July 1953 submitted a report that there was an apprehension of breach of the peace about the possession of the land in dispute.

On the application of the applicant Abdul Rauf, which contained the allegation that there was a danger of breach of the peace, and on the police report the Sub-Divisional Magistrate, Patti passed an order directing the station officer Kandhai to attach the property and give it in the 'supardari of a respectable 'supardar' and ordered the parties to file their written statements by 19-12-53. That order was passed on 14-11-1953.

It is clear that the parties were directed to file their written statements with respect to possession. The learned Magistrate in a subsequent order came to the conclusion that there was no danger of breach of the peace and as he found that the opposite party was in possession at the time of the passing of the preliminary order, therefore he declared him to be entitled to possession thereof, until evicted therefrom in due course of law, and Abdul Rauf was forbidden from disturbing the possession of the opposite party.

3. Dissatisfied with this order, Abdul Rauf went up in revision before the learned Sessions Judge Pratapgarh who came to the conclusion that since the Magistrate had come to the conclusion that there was no danger of breach of the peace, therefore, he should not have taken proceedings under Section 145, Cr. P. C. and should not have gone into the question of possession at all.

The Magistrate should have asked the police to deliver back possession to the party from whom it was obtained and status quo should have been restored. He has relied on two decisions of this Court 'Shiva Nand Misra v. State', 1954 All LJ 608 (A) and 'Dulla v. State', AIR 1953 All 341 (B), and learned counsel for Abdul Rauf, who is supporting the reference, has further relied on a decision of this Court in 'Murru v. State', AIR 1955 All 95 (C).

The facts of the cases, in the authorities relied on by learned counsel for Abdul Rauf in support of the reference are different from the facts of this case. In those cases, in the one no preliminary order was passed and in the other the preliminary order was to the effect that there was no danger of breach of the peace and in either case the Magistrate could not go into the question of possession.

4. Section 145, Cr. P. C. has prescribed the procedure in detail. Under Sub-clause (1) of Section 145 the District Magistrate or the Sub-Divisional Magistrate has first to be satisfied from the police report or other information that a dispute, likely to cause a breach of the peace, exists. At this stage there is no question of any judicial enquiry in the matter.

The Magistrate should be satisfied either on the facts or statements made in the application under Section 145, Cr. P. C. or he can call for a police report and thereafter if he is satisfied that there was a danger of breach of the peace he then assumes jurisdiction under Section 145. When he once assumes jurisdiction then the duty that is cast upon him is to ask the parties to file written statements and that evidence is to be confined to question of possession.

He cannot go into the question of title at all nor about the existence or absence of the danger of breach of the peace as there is no provision authorising him to call the parties and rehear the case about the nature of breach of peace or whether any breach of peace existed or not. Once a Magistrate passes an order after, his satisfaction that there was a danger of breach of peace, he cannot, at a subsequent stage, record a contradictory finding.

There is no provision in Section 145 for a reconsideration of this question, and I find nothing in the Code which permits a Magistrate in the course of a subsequent enquiry to record a finding on the question whether a dispute is or is not likely to cause breach of the peace; and if one party does not submit any evidence on that issue the absence of such evidence on record cannot be considered as sufficient reason for interfering with the preliminary order.

In the final order the Magistrate has not to record any finding on this issue. Once he is so satisfied and once he assumes jurisdiction his jurisdiction cannot be divested and his subsequent duty is only to confine himself to the decision of the question of possession.

5. In this case the Magistrate after the order of 14-11-1953 had jurisdiction to entertain and make enquiry about possession under Section 145, Criminal P. C., and he was right in proceedings on the question of possession.

6. The reference is accordingly rejected.