

Ram Autar vs Udaibir Singh And Ors. on 13 February, 1953

Equivalent citations: AIR1953ALL498, AIR 1953 ALLAHABAD 498

ORDER

Harish Chandra, J.

1. In this case proceedings under Section 145, Criminal P. C., are going on in the Court of a Magistrate. During the course of the proceedings the learned Magistrate passed an order directing that the property in dispute be attached. Against that order of attachment a revision application was filed in the court of the learned Sessions Judge of Aligarh. After that application had been filed before the learned Sessions Judge he passed an order staying attachment. But before this order could be communicated to the station officer of the police station concerned the attachment had taken place. When this fact was brought to the notice of the Sessions Judge, he passed an order that the attachment be released in favour of the person from whose possession the property had been attached and the applicant in the proceedings under Section 145, Criminal P. C. has come to this Court against that order of the learned Sessions Judge.

2. The simple point that arises in this case is whether the learned Sessions Judge could pass an order releasing the attachment while an application in revision was pending before him. A perusal of Section 435, Criminal P. C. seems to indicate that he has no such powers. The revisional jurisdiction under Section 435 is very wide. But it does not seem to confer upon a court calling for the record of any proceedings of an inferior court, the power to pass any interim order except in a case in which a sentence has been passed by such inferior Court. This point was considered in the Calcutta case of -- 'Mukutdhari Shao v. Ajodhya Shao' AIR 1949 Cal 241 (A). The circumstances of that case were very much similar and Sen J. by whom the case was decided, observed-

"The learned Sessions Judge had no jurisdiction whatsoever to stay the order for possession granted in favour of the first party. Still less did he have any jurisdiction later to pass an order restoring possession to the second party."

3. I am, therefore, of the opinion that the interim orders passed by the learned Sessions Judge of Aligarh on 15-7-1952, and 31-7-1952, respectively were passed without jurisdiction and accordingly allow the revision and set them aside. The property in dispute will remain under attachment meanwhile. The learned Sessions Judge may, however, deal with the revision application pending before him and pass such orders as he may consider necessary.