

Basdeo vs Badri Narain on 4 October, 1950

Equivalent citations: AIR1952ALL186, AIR 1952 ALLAHABAD 186

ORDER

P.L. Bhargava, J.

1. This a reference by the learned Sessions Judge of Allahabad. The facts which have given rise to the reference are these: On 21-6-1948, Badri Narain presented an application to the Court of the Sub-Divisional Magistrate of Handia, in the district of Allahabad, for initiation of proceedings, under Section 145, Criminal P.C. It was alleged in the application that there was a dispute relating to certain fields; and there was a likelihood of a breach of the peace. On this application the Magistrate passed the following order, on the same date :

"S. O. Sarai Mamrez ; Please enquire and report. If there is an apprehension of breach of peace, the property in dispute may be attached and compliance report should be sent to this Court before 10-7-18."

The police submitted a report in due course, pointing out that there was an apprehension of breach of the peace. The report further stated that the property in dispute had been attached. On receipt of the police report the Magistrate made an order that the parties be summoned for 4-8 1948. In pursuance of this order, a notice was issued to the parties concerned to appear in Court, file their respective claims to the property in dispute. The parties filed the written statements on 30-8-1948. Subsequently, on 13-9-1948, Badri Narain filed an application before the Magistrate that he did not want to press his application of 21-6-1948. It may be noted here that in an application filed on 30-8-1948, Basdeo, the opposite party, had stated that in case the applicant Badri Narain wanted to withdraw his application or to get it dismissed in default, the property should be released in his favour. In an earlier application filed by Bhola Nath, who was also one of the opposite party, the legality of the attachment of the property in dispute had been challenged. On 19-10-1948, the Magistrate made the following order :

"The case is withdrawn by the complainant, The attached property be released and case consigned."

2. Against the above order of the Magistrate, Basdeo filed a revision in the Court of the Sessions Judge of Allahabad, challenging the legality of the order. The learned Sessions Judge was of opinion that there was no provision in the Criminal P. C. for the withdrawal of the proceedings initiated under Section 145, Criminal P. C. He observed that once the Magistrate was satisfied that there was a dispute likely to cause a breach of the peace and the written statements had been filed, he was bound to proceed with the inquiry as to possession under Section 145 (4), Criminal P. C. He further observed that, apart from its legality the order was likely to give rise to fresh trouble since it had not

been specified in whose favour the attached property was to be released. Accordingly, he has made this reference recommending that the order allowing the withdrawal of the application passed by the Magistrate be set aside and he may be directed to give a decision according to law.

3. The order of the learned Sessions Judge is based on the assumption (1) that the Magistrate was satisfied that a dispute likely to cause a breach of the peace existed, (2) that the Magistrate had made a preliminary order under Section 145 (1), Criminal P. C., and (3) that the attachment was valid. These assumptions are not justified. The first order which the Magistrate made on the application of Badri Narain when it was presented to him, on 21-6-1948, goes to show that on the materials placed before him, he was not satisfied about the existence of any dispute likely to cause a breach of the peace. He called for a police report and said in the order "if there is an apprehension of breach of peace" the Sub-Inspector might attach the property. After the receipt of the police report, the Magistrate never had occasion to apply his mind to it and to consider whether it contained any materials on which he could be satisfied that there was any dispute likely to cause a breach of the peace. He merely directed the parties to be summoned for a specified date. Learned counsel for Basdeo has contended that the order summoning the parties could not have been passed by the Magistrate unless he was satisfied about the existence of any dispute likely to cause a breach of the peace; but from the nature of the order which was passed by the Magistrate it is not possible to draw any such inference. He nowhere stated the grounds of his being so satisfied.

4. Learned counsel has invited my attention to a decision of this Court reported in *Madan Mohan v. Sheo Raj*, 1932 ALL. I. J. 503 and also to an Full Bench decision reported in *Kapoor Chand v. Suraj Prasad*, 55 ALL. 301. In the first case it was pointed out by Boys J. that Section 145 (1), Criminal P. C. was not mandatory except in the sense that the Court would set aside an order passed under the latter clauses of Section 145, if there was any reason to believe that the omission of an order or the passing of an order not strictly in terms of Section 145 (1), Criminal P. C. led to some prejudice to one or other of the parties. In that case, it appears that lengthy proceedings under Section 145 had taken place and it was found that the parties were not in any way prejudiced by the final order which was passed. It was further found that the parties knew very well all the facts and contested the matter with the advantage of the knowledge of the whole of the facts. In those circumstances it was held that the omission to draw up an order under Section 146 (1) had nothing to do with the question of jurisdiction.

5. In the second case, an application to take proceedings under Section 145, Criminal P. C. was made to a Magistrate who took the applicant's statement and called for a police report. On receipt of the police report, he, being occupied with other work transferred the case for disposal to another Magistrate, with the remark that judging from the police report there appeared to be some basis for the complaint. The Magistrate, to whom the case was transferred, perused the record and directed notice to issue to the opposite party according to law. Written statements were filed and evidence was recorded in due course, and the Magistrate ultimately passed an order directing the applicant to be put in possession of the disputed property and prohibiting the opposite-party from interfering with it. It was held that although the Magistrate who passed the order in the case did not strictly comply with the provisions of Section 145 (i), Criminal P. C., inasmuch as he omitted to state in writing that he was satisfied that there was a likelihood of a breach of the peace and the grounds on

which he was so satisfied, yet such omission did not deprive him of his jurisdiction and amounted only to an irregularity, which was cured by Section 537 of the Code, as no failure of justice was in fact occasioned by such omission. In that case there were materials on the record from which it was possible to infer that an order under Section 145 (1), Criminal P. C. had been made. Both the cases are, therefore, clearly distinguishable.

6. In the circumstances of the present case, which have been set out above, it is not possible to hold that the Magistrate was at any time satisfied about the existence of any dispute likely to cause a breach of the peace.

7. Admittedly, in this case no order was ever made in terms of Section 145 (1), Criminal P. C., and there are not sufficient materials on the record from which it may be inferred that the Courts ever intended to make an order of the nature contemplated by Section 145 (1), Criminal P. C.

8. The attachment of the property in dispute was obviously illegal. An order of attachment could be made at the stage at which it was made only if the Magistrate considered the case as one of emergency. When the Magistrate was not satisfied even about the existence of a dispute likely to cause a breach of the peace, how could he be satisfied about the existence of any emergency. The order made by the Magistrate authorising the Sub-Inspector of Police to attach the property if he was satisfied that there was an apprehension of a breach of the peace was absolutely illegal; he had no power under Criminal Procedure Code to make any such authorization.

The satisfaction of the Magistrate about the existence of any dispute likely to cause a breach of the peace or about the existence of an emergency, and not that of the Sub-Inspector of Police, was necessary to justify an order of attachment at that stage.

9. An order made under Section 145 (1), Criminal P. C. can be cancelled in the circumstances mentioned and in the manner provided in Clause (5) of the said section and unless so cancelled the order is final. Such an order having been made by the Magistrate on being satisfied that there was a dispute likely to cause a breach of the peace, and the object of initiating proceedings under Section 145 being the prevention of the breach of the peace, the proceedings initiated thereunder can be terminated only in the manner provided therein. There being nothing in the section allowing the termination of proceedings in consequence of the withdrawal of the party at whose instance the proceedings were initiated, the proceedings cannot be terminated on such withdrawal after the order under Clause (1) of the section has become final. The proceedings initiated without jurisdiction or irregular proceedings, like those in the present case, however, stand on a different footing and the Magistrate may terminate them at any stage.

10. In the present case, there being to valid order under Section 145 (1), Criminal P. C. or any valid attachment of property and the opposite party having challenged the legality of the attachment, the sooner the irregular proceedings were terminated and property released from illegal attachment it was better in the interest of all concerned. I, therefore, see no illegality or impropriety in the order under consideration.

11. As regards the second point raised by the learned Judge that trouble may arise in future as the Magistrate has failed to specify the person in whose favour the attached property was to be released, I am of opinion that in the ordinary course the property attached will be released in favour of the person from whose possession it was attached. If the Magistrate feels any doubt on that point it will be open to him to decide that question when it arises before him.

12. I, therefore, reject this reference.