
(2012) 02 GAU CK 0013
In the Gauhati High Court
Case No : Criminal Petition No. 595 of 2011

Abdul Kalam @ Abul Kalam (MD.) and Ors	APPELLANT
Vs	
State of Assam and Anr	RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 482

Citation : (2012) 3 GLT 124

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : Islam, Mr. R. Dey, Ms. N. Mitra and Ms. D. Metri, for the Appellant;
B. Saikia, Addl.PP, Mr. P. Sarma, B.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Ujjalbhuyan, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 (CrPC) whereby and whereunder the petitioners have challenged the legality and validity of the order dated 23.09.2011 passed by the learned Additional District Magistrate, Darrang, Mangaldoi in Misc. Case No. 13/2005 u/s 145 Cr.P.C. The respondent No. 2 as the first party had filed a petition before the learned District Magistrate, Darrang, Mangaldoi wherein the petitioners were arrayed as the second party. In the said petition, the first party stated that he was the Secretary of the society called Kurua Krishak Samabai Samity and that the revenue authority of the State Government had made allotment of the schedule land in favour of the society in the year 1956. According to the first party, the possession of the schedule land was handed over to the society on 07.09.1971 and since then they were in possession over the said land. The detailed particulars of the schedule land may not be necessary but suffice it to say that the said land measures 53 bighas 4 kathas 16 lechas covered by P.P. No. 160, 226(old) and 208, 448(new) situated at village-No. 2 Siktaguri, mouza and PS-Sipajhar in the district of Darrang. The allegation made in the said petition was that the second party was encroaching Government land just adjacent to the

western side of the schedule land. The second party thereafter tried to dispossess the first party from the schedule land. In the morning of 04.11.2004, while the members of the society went to the schedule land for ploughing the same, the second party obstructed them. The same was repeated again on 28.11.2004 and 03.12.2004. Alleging that the second party tried to dispossess them from the schedule land, the first party stated that there was every possibility of breach of peace between the parties and, therefore, requested the learned Magistrate to restrain the second party from entering into the schedule land.

2. The said petition was registered as Misc. Case No. 13/2005. The learned Magistrate by his order dated 01.02.2005, on consideration of the police report, which was called for, recorded his satisfaction that there was every likelihood of breach of public peace and tranquility due to the dispute between the parties. Therefore, a proceeding u/s 145 Cr.P.C. was drawn up.

3. The second party contested the proceeding by filing their written statement. In the written statement, the second party while denying the claim of the first party, further stated that they had been in possession of about 30 bighas of land falling within the schedule land for about 20 years.

4. It appears that the case dragged on for years together. From the order dated 19-06-2009 marked as annexure-E to the present application, it is seen that the second party had filled an application to cross examine the witnesses of the first party. This was objected to by the first party on the ground that the second party had failed to cross examine the said witnesses for all these years. By the said order dated 19.06.2009, the learned Additional District Magistrate rejected the said prayer of the second party and directed the concerned Circle Officer and Gaonbura to submit report.

5. In his report dated 02.01.2010, the Circle Officer, Sipajhar Revenue Circle stated that though there is no record of allotment of the disputed land in his office, the disputed land is under the possession of the first party prior to 01.02.2005. The further information furnished by the Circle Officer is that the total area of the disputed land is 153 bighas 4 kathas 16 lechas. The Gaonbura also submitted his report on 28.08.2009. In his report, the Gaonbura stated that the disputed land is under the possession of the second party for more than 20 years.

6. The 1st party examined four witnesses in support of its claim. On the other hand, the second party also examined four witnesses. The learned Magistrate examined the evidence adduced, the written arguments submitted by both the sides and other documents on record, including revenue receipts etc. The learned Additional District Magistrate on a consideration of the aforesaid, vide the final order dated 23.09.2011 arrived at the finding that the disputed land and the land stated to be in the possession of the second party are distinct and separate. The learned Additional District Magistrate gave precedence to the report of the Circle

Officer over that of the Gaonbura and held that the disputed land is under the possession of the first party, further directing the second party not to interfere with the possession of the first party until ordered by the proper court of law and vacated the attachment order.

7. Heard Mr. R. Dey, the learned counsel for the petitioners/second party. Also heard Mr. B.K. Das, learned counsel for the respondent No. 2/first party. The Respondent No. 1 State of Assam being only a formal party, the learned Additional PP, Assam, Ms. B. Saikia, appearing for the state, did not make any submission.

8. Mr. R.Dey, learned counsel for the petitioners submits that the order passed by the learned Magistrate is wholly illegal in as much as he has not stated therein the grounds of his satisfaction. According to the learned counsel, recording of the grounds of satisfaction is the sine-qua-non for invoking the power u/s 145 Cr.P.C. He further submits that the learned Magistrate has to see as to who is in actual physical position, which exercise was not carried out by the learned Magistrate in the present case. In support of his submissions, he has referred to and relied upon the following decisions :-

(1) Rajpati Vs. Bachan and Another, .

(2) 1996 (1) GLT 316: Shri Nazrul Hague Mazarbhuyan & Ors. Vs. Secy., Governing Body, S.S. College & Ors.

(3) (2005) 10 SCC 551: Shamim Alam Vs. Sajjid Hussain & Anr.

9. Resisting the submission of the learned counsel for the petitioners, Mr. B.K. Das, learned counsel for the respondent No. 2 submits that there is no infirmity in the impugned order passed by the learned Magistrate and that the present is not a case which requires interference by this Court in the exercise of its inherent powers u/s 482 Cr.P.C. He, therefore, prays for dismissal of the present application. In support of his submissions, learned counsel has placed reliance of the following decisions :-

(1) 1996 (1) GLT 316: Shri Nazrul Hague Mazarbhuyan & Ors. Vs. Secy, Governing Body, S.S. College & Ors.

(2) Anup Kumar Sanyal Vs. Gakul Bey, .

10. Having broadly noticed the rival submissions, let us now examine the provision of Section 145 Cr.P.C., which is quoted hereunder in its entirety.

S. 145. Procedure where dispute concerning land or water is likely to cause breach of peace.-

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so

satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the 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, 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 made by him under sub-section (1), in possession of the subject of dispute :

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the

legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed u/s 107.

11. In the case of Rajpati (supra), the Apex Court held that a finding of existence of breach of peace is not necessary when the final order is passed. Once a preliminary order drawn up by the Magistrate sets out the reasons for holding that a breach of peace exists, it is not necessary that the breach of peace should continue at every stage of the proceeding. The Apex Court further held that u/s 145 Cr.P.C., it is for the Magistrate to be satisfied regarding the existence of a breach of peace and once he records his satisfaction in the preliminary order, the High Court in revision cannot go into the sufficiency or otherwise of the materials on the basis of which the satisfaction of the Magistrate is based.

12. This Court in the case of Shri Nazrul Haque Mazarbhuyan (supra) held that in a proceeding u/s 145 Cr.P.C, the Executive Magistrate has to decide as to who was in actual possession of the land in question until their rights are determined by the competent Court. The Executive Magistrate must be satisfied himself from his own independent judgment without acting mechanically on the opinion of the other agencies relating to the factum of possession.

13. Again, in the case of Anup Kr. Sanyal (supra), this Court held that in a proceeding u/s 145 Cr.P.C, the Executive Magistrate prima-facie comes to a conclusion as to which party is in possession and the same should be allowed to hold the field for keeping peace between the parties. Such determination can always be challenged before a Civil Court and the Civil Court is not bound by the prima facie finding of possession recorded in a proceeding u/s 145 Cr.P.C.

14. In the case of Shamim Alam (supra), the Apex Court held that the police report is not the final word. The Magistrate has to apply his mind independently.

15. From a consideration of the above, it can be said that in sum and substance, a proceeding u/s 145 Cr.P.C is primarily concerned with the prevention of breach of peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom in due course of law. The duty of the

Magistrate is not to go into questions of title but to meet the urgency of the situation by maintaining the party in possession.

16. A proceeding u/s 145 Cr.P.C. is purely of a preventive and provisional nature, the purpose being to ward off commission of breach of peace or to preserve the peace. The executive machinery has to act with speed and haste to maintain peace in the area concerned. The enquiry is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of parties.

17. The essence of drawing up of a proceeding u/s 145 Cr.P.C. is the satisfaction of the Executive Magistrate. The satisfaction is to be recorded by him. However, no detailed reasons are to be given by the Magistrate while recording his satisfaction. It would be enough if his order makes it apparent that he has applied his mind to the materials on record. Ordinarily, the High Court will not go into the question of sufficiency of the materials on which the order u/s 145 Cr.P.C. was passed. Where the view taken by the Magistrate in deciding an application u/s 145 Cr.P.C. is based on evidence and is a plausible view, the High Court will refrain from interfering with the same u/s 482 Cr.P.C. The High Court in the exercise of its revisional jurisdiction or in the exercise of its inherent powers u/s 482 Cr.P.C. would not go into the question of sufficiency of materials which had satisfied the Magistrate.

18. Again, once a Magistrate has passed a preliminary order u/s 145(1) Cr.P.C., he has to continue with the proceeding to its logical end. The Magistrate having directed attachment, he cannot thereafter reject an application while passing the final order on the ground that there is no apprehension of breach of peace.

19. Though there is no time limit prescribed for disposal of a proceeding u/s 145 Cr.P.C., considering the very nature of such proceeding, it should not be allowed to be dragged on for a long time. However, a word of caution here. The mere fact that the proceeding is pending for a number of years is by itself not a sufficient ground for coming to the conclusion that there is no apprehension of breach of peace.

20. Coming to the facts of the present case, it is seen that the learned Executive Magistrate while passing the preliminary order on 01.02.2005 considered the police report as well as the Non FIR submitted by the first party. Thereafter, he recorded his satisfaction that there was every likelihood of breach of peace and tranquility between the parties and drew up the proceeding u/s 145 Cr.P.C. After a considerable delay, the learned Additional District Magistrate, Darrang vide the order dated 23.09.2011 disposed off the proceeding by declaring the possession of the respondent No. 2 with a direction to the petitioners not to interfere with the possession of the respondent No. 2 until ordered otherwise by a proper Court of law.

21. While recording such finding, the learned Magistrate considered the petition submitted by the respondent No. 2 as well as the written statement submitted by

the petitioners. The learned Magistrate also took into consideration the extensive evidence adduced by both the parties. In addition, written arguments of both the sides were called for and perused. Further, the learned Magistrate considered the police report, the report of the Circle Officer and that of the Gaonbura. The learned Magistrate on a consideration of the fact situation, gave primacy to the report of the Circle Officer, which is on record as annexure-F to the present application. The Circle Officer in his report dated-02.01.2010 stated the following:-

1. There is no record of allotment of this D/L in this office.
2. The disputed land was possessed by the 1st party i.e. the Secy. Shri Gopal Das, S/O late Nanu Ram Das, Kurua Krishak Samabai Samiti prior to 01.02.2005.
3. Total area of D/Land is 153 Bighas 4 Kathas 16 lessas under Dag No. New 44 as per record available in this Office

22. On an overall assessment of the above, the learned Magistrate took the view that the disputed land and the land stated to be in the possession of the petitioners are distinct and separate and declared the possession of the respondent No. 2 over the disputed land.

23. In my considered opinion, the view taken by the learned Magistrate is a plausible one. I also find no infirmity in the order of the learned Magistrate dated 23.09.2011, though a view can be taken that the satisfaction of the learned Magistrate could have been expressed in a more better way and the proceeding could have been concluded expeditiously. But that does not, in my view, vitiate the final order of the learned Magistrate so much so that the same is required to be interfered with by this Court u/s 482 Cr.P.C.

24. In view of the discussions made above, I see no merit in this application and the same is hereby dismissed. Interim order passed earlier stands vacated. No cost.