

(1987) 09 AHC CK 0001
In the Allahabad High Court
Case No : Criminal Revision No. 1976 of 1985

Akhilak Ahmad and Others

APPELLANT

Vs

Vahid Ali Ansari and Others

RESPONDENT

Date of Decision : 08-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1987) 11 ACR 696

Hon'ble Judges : V.P. Mathur, J

Bench : Single Bench

Advocate : S.M. Chaturvedi, for the Appellant; A.G.A. and S.A. Khan, for the Respondent

Judgement

V.P. Mathur, J.—I have heard the learned Counsel on both sides.

2. These present proceedings come to this Court, as a result of a petition moved u/s 145 of the Code of Criminal Procedure, on which a preliminary order was passed by the learned Magistrate on 30-5-1983. The property in dispute was attached on 23-6-1983. A final order was passed by the learned Magistrate on 7-6-84. This was Criminal case No. 111 of 1983 initiated by Akhlakh Ahmad against Dr. Vahid Ali Ansari.

3. Against the order of the learned Magistrate dated 7-6-84, a criminal revision was filed being Cr. Rev. No. 32 of 84 by Dr. Vahid Ali Ansari and the learned Additional Sessions Judge, Gyanpur, Varanasi by his order dated 11-10-1985 allowed the revision, set aside the impugned order dated 7-6-1984 and directed remand of the case for decision afresh on the question of possession over the disputed property in accordance with law and in the light of the observations made in the body of the judgment.

4. The only grievance of the revisionist before me is that in the body of the judgment, the learned Additional Sessions Judge has made certain observations regarding the merits of the case and at two places atleast he has recorded a

finding of fact regarding the possession of one of the parties, and it is contended that this was not open to the learned Additional Sessions Judge to do so in view of the case of Mahabir and Others Vs. State of U.P. and Others, .

5. A perusal of the judgment of the learned Sessions Judge will show that on the one hand he has placed reliance upon the case of Mahavir and on the other in the body of the judgment he has recorded certain findings of fact regarding the possession on the spot holding that the evidence shows that Dr. Vahid Ali Ansari was in possession and had raised the constructions. Obviously the learned Judge has traversed beyond his jurisdiction in this respect and these observations regarding the possession on the spot were uncalled for and have got to be ignored. The order for remand, however, is justified, and the question of possession has to be decided by the learned Magistrate, as has been directed by the learned Sessions Judge in the operative portion of his judgment dated 11-10-1985.

6. This revision is, therefore, disposed of with this observation that while the learned Magistrate shall be completely free to consider the evidence on the record and to give an independent decision as regards the possession on the spot and pass a proper order under Section. 145 of the Code of Criminal Procedure, he will not be bound by the observations made by the learned Sessions Judge on pages No. 6 and 7 of his judgment regarding the possession on the spot being that of Vahid Ali Ansari. On the contrary he will ignore these observations of fact and then proceed in the matter. A copy of this order shall go to the learned Magistrate at a very early date with the direction that he shall proceed with the case and try to dispose it of expeditiously.