
(2002) 02 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : Criminal Pc. No. 39/2001

Ali Mohammad Tantry and Ors.

APPELLANT

Vs

State and Ors.

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 145

Citation : (2002) KashLJ 265

Hon'ble Judges : B.L.Bhat, J

Bench : Single Bench

Advocate : M.I.Qadiri, Advocates appearing for the Parties

Judgement

1. Through the medium of petition in hand the petitioner is through their counsel have sought quashing of proceedings initiated by Tehsildar

Executive Magistrate, Badgam under Section 145 Cr. P. C. in respect of land measuring 2 kanals and 19 marlas covered by Survey No.

2759/1402 located at village Rawalpura. It is maintained in the petitioner that items of sale deed executed on 20.05.2001 petitioners 2 to 4 have

purchased the land measuring 2 kanals and 19 marlas comprising of survey No. 2759/1402 located at Rawalpura from one Habib Tantry against a

consideration amount of Rs. 1,50,000/-. The possession of the said land was taken by the petitioners on the said date and the sale deed in this

behalf was registered by SubRegistrar on 28.05.2001. That the mutation of the said land stands attested in favour of the said petitioners by the

revenue authorities on 30.05.1982. That the respondents 2 to 7 have no right or interest in the said land but in order to deprive the petitioners 1, 3

and 4 of the ownership and possession of this land have involved them in unnecessary litigation by instituting suits before the SubJudge, Budgam,

During the pendency of the suits the respondents have approached the police concerned, who have submitted a report under section 145 Cr.PC

for initiation of proceedings under section 145 Cr.P.C. in the matter. That Tehsildar Executive Magistrate had no jurisdiction to entertain the said

complaint because the said land is in possession of the petitioner when on the other hand the Tehsildar Executive Magistrate has entertained the said

report and recorded order in the said proceedings. That the petitioners are aggrieved of the proceedings initiated by Tehsildar Executive Magistrate

under section 145 Cr.P.C in respect of said land which is in their ownership and peaceful possession. That in proceedings under section 145

Cr.P.C. the learned executive Magistrate has not recorded any preliminary order as contemplated under section 145 (1) Cr.P.C. That all the order

passed in the said proceeding are infirm and are liable to be set aside.

2. Heard learned counsel for the petitioners and Mr. Qadri, learned Sr. Addl. Advocate General.

3. Record is received. It appears that report for initiation of proceedings under section 145 Cr. P. C. came to be initiated by SHO P/S Saddar

before the Executive Magistrate, Tehsildar, Budgam stating therein inter alia that Abdul Hamid Tantry, Firdos Ahmad and Bashir Ahmad Tantry,

sons of Abdul Samad Tantry expressed their desire to sell land measuring 3 kanals comprising of survey No. 2759/1402 located at Rawalpura.

Pursuant to that AN Mohammad Tantry, Bashir Ahmad, Farooq Ahmad Tantry sons of Habibullah Tantry party No. 1 and Mohd. Ramzan, Abdul

Ahad Tantry, and Fayaz Ahmad Sons of Abdul Hamid Tantry Party No. 2 became desirous to purchase it jointly. Later on party No. 1 purchased

this land and took possession which irritated the party No. 2 as a result of which both the parties resorted into rioting and in violence several times,

as a result of which cases and counter cases under FIF Nos. 161, 162, 165, 166, 100 and 200 of 2001 in Police Station, Saddar came to be

registered. On receipt of this information the learned Executive Magistrate Tehsildar appears to have recorded statement of head constable No.

584/S namely Bashir Ahmad of P/S Saddar and came to record an order dated 30.07.2001, which reads that the complaint under section 145

Cr.P.C came to be presented by Head Constable No. 584/S Bashir Ahmad of P/S Saddar, The same is entered into registered concerned. The

statement of Head Constable has been recorded which forms part of the file wherein he has stated that the parties have a dispute as a result of

which they resorted to quarreling and six cases have been got registered by them against each other. Therefore, the parties to the complaint are

hereby put to notice with a direction to cause their appearance before the court on 02.08.2001 and file their objections falling which the subject

matter of the dispute shall be attached under section 145 Cr. P.C.

145. Procedure where dispute concerning land, etc. is likely to cause breach of peace(1) whenever a (Chief Judicial Magistrate, or any other

Judicial Magistrate of the first class) is satisfied from a police report or other information that a dispute likely to cause breach of the peace exists

concerning any land or water or the boundaries thereof, within the local limits of his 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, within a time to be

fixed by such magistrate, and to put in written statements of their respective claims as respects the facts of actual possession of the subject of

dispute and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons as they rely upon in

support of such claims.

Provided that the dispute likely to cause a breach of peace concerns any land as defined in the Jammu and Kashmir Agrarian Reforms Act, 1976,

the powers under this section shall be exercisable only by the District Magistrate or an Executive Magistrate of the First Class.

4. From the reading of the aforesaid section it is abundantly clear that before a preliminary order for initiation of proceedings under Section 145

Cr. P.C. the Magistrate is under a legal obligation to draw a preliminary order, which should contain:

a. a statement that the Magistrate is satisfied as to the existence of a dispute likely to cause breach of peace concerning the possession of any land,

water or boundaries thereof within his local jurisdiction;

b. the grounds of his being so satisfied;

c. the correct description of the property in respect of which the proceedings are instituted;

d. the parties concerning such disputes and

e. a direction requiring the parties or either or them to attend the court on a particular date and put in writ ten statement in respect of the factum of actual possession of the disputed land or water or bound are thereof whatever the case may be, and further requiring them to produce documents in support of their claims and to adduce evidence by producing the affidavits of such person in support of their respective claims. This order, the Magistrate is required to make in writing for testing its correctness.

5. As indicated, the order of initiation of proceedings under Section 145 Cr. P.C does not disclose the grounds of satisfaction of the Magistrate to the effect that there is any dispute with respect to the effect that there is any dispute with respect to the land in question which may likely to cause breach of peace, nor the description of the land is incorporated. This being so, the proceedings before the Executive Magistrate are without preliminary order as a result of which the entire proceedings are liable to be vitiated.

6. Therefore, in view of the afore discussion the petition is accepted and the proceedings under Section 145 Cr. P.C pending before the learned Tehsildar Execulive Magistrate. Budgam are hereby quashed. Record be returned together with a copy of this order.