
(1990) 04 AHC CK 0033
In the Allahabad High Court
Case No : Criminal Revision No. 1423 of 1987

Arjun and Ors.

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 02-04-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 395, 396, 402

Citation : (1990) 04 AHC CK 0033

Hon'ble Judges : Palok Basu, J

Final Decision : Allowed

Judgement

Palok Basu, J.—This revision is directed against the order of VI Additional District and Sessions Judge, Aligarh dated 2771987 in Criminal case No. 502 of 1986 allowing the revision of Sukha arising out of proceedings under Section 145, Cr. P.C. initiated between Shkha and Arjun and others in the Court of S. D. M. III, Khair, district Aligarh.

2. It appears that the proceedings under Section 145, Cr. P. C. were initiated before the Magistrate at the behest of Sukha. By a reasoned judgment and order dated 17121986 the Magistrate held that Arjun and others were in possession of the disputed plots and, therefore, directed that the attached property be released in their favour. He had obviously held simultaneously that first party Sukha was not in possession. Aggrieved, Sukha had filed a revision before the Sessions Judge and two points were urged before the lower Revisional Court:

(1) That the Magistrate has not apprised himself of the correct evidence on the record.

(2) That there is no finding that there was initial necessity of passing an order under Section 146 (1), Cr. P.C.

3. Sri S. S. Tiwari, learned Counsel for the applicants had assailed the order of the Sessions Judge whereby he had remanded the matter to the Magistrate's Court on the finding that the discussion of the evidence was not proper and legal.

Sri R. S. Yadav, learned Counsel for the opposite party has supported the said order.

4. Learned Counsel for the parties have not advanced arguments concerning the absence of requisite finding for necessitating the enforcement of Section 146 (1), Cr. P.C., during the proceedings under Section 145, Cr. P.C. The examination of the Magistrate's orders further satisfies this Court that there stood need and necessity for passing the order under Section 146 (1) during the proceedings under Section 145, Cr. P.C.

5. The aforesaid points of the learned Counsel for the applicants took this Court to the entire discussion as recorded in the impugned order dated 17121986.

6. Two fundamental deficiencies were noticed by the Magistrate. As regards the claim of opposite party Sukha, he said that he had not filed the sale deed which, according to him conferred title. He further said that the possession of Sukha is based only on the said title deed. It was in the fitness of things that he should have produced its copy.

7. The second point which was recorded by the Magistrate in deciding the matter against Sukha was that overwhelming documentary and oral evidence was produced on behalf of the applicants as compared to that produced by Sukha.

8. The Revisional Court's power of remanding matters to the Magistrate's Court for redirection or redecision are circumscribed by the provisions of Sections 395, 396 and 402, Cr. P.C. The discussion which the trial Court make about evidence have to indicate to the higher courts that they are alive to the situation which is existing in the case and the evidence produced by the parties. These have to be taken due note of while deciding the case between parties. The discussion of the Magistrate in the instant case cannot be termed as nonapplication of mind to the evidence and the materials produced before him. It cannot, therefore, be said that the Magistrate has not followed the mandate of law while passing the impugned order dated 17121986. There was enough discussion in the said order. It may be that in some case the view of one trial Court may be preferred to a possible other view of the same evidence but much discretion has been conferred upon the Magistrate particularly in the proceedings under Section 145, Cr. P.C. to evaluate the evidence and record finding about possession. It is notable that any finding to fact recorded by the Magistrate (criminal Court) in the proceedings under Section 145, Cr. P.C. are only temporary in the sense that they are subject to the orders that may be passed by the competent Civil or Revenue Court.

9. The discussion aforesaid shall not be interpreted by any of the parties to the advantage or detriment of either of them in the proceedings which may commence before the competent Civil Court or Revenue Court.

10. In view of the aforesaid observations this revision is allowed, the order of the Sessions Judge dt. 2771987 is hereby quashed and that of the Magistrate dated 17121986 is upheld. The interim order dated 1091987 is hereby vacated.

Revision allowed.