

(1956) 08 OHC CK 0014

In the Orissa High Court

Baidyanath Mohanty and Another

APPELLANT

Vs

Kunjabehari Das Mohapatra and Others

RESPONDENT

Date of Decision : 24-08-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 517(1), 520

Citation : (1956) 22 CLT 435 : (1957) CriLJ 288

Hon'ble Judges : Narasimham, C.J

Bench : Single Bench

Judgement

Narasimham, C.J.—This is a criminal revision against an order passed by the Additional Sessions Judge of Mavurbihanj, on an appeal u/s 520, Criminal Procedure Code, against an order passed by the Magistrate, First Class, Balasore, who, after dropping a proceeding u/s 145 of that Code, directed that the entire paddy from the attached property should be delivered to the first party after making the necessary deductions.

2. The learned Additional Sessions Judge thought that after dropping the proceeding u/s 143, Criminal Procedure Code, the learned Magistrate had no jurisdiction to pass consequential orders regarding the disposal of the attached property as he had become functus officio. Here, however, the learned Sessions Judge was clearly wrong. It is true that after dropping the proceeding u/s 145 the learned Magistrate may not have jurisdiction, under Sub-section (8) of that section, to pass any orders directing the disposal of the attached property, because that sub-section, in express terms, applies only when an enquiry under that section is "completed". By dropping a proceeding u/s 145, it cannot be said that the enquiry under that section is "completed". It may really tantamount to "cancellation" of the order passed under that section as provided in Sub-section (5).

3. But that does not exhaust the jurisdiction of the Magistrate. I think in cases of this type the Magistrate has jurisdiction to act under Sub-section (1) of Section 517, Criminal Procedure Code. That sub-section clearly says that when an

enquiry is) "concluded" the Court may make such order as it thinks fit for the disposal of any property produced before it. In *Jam Bhambho v. Makhdum* AIR 1942 Sind 117 (A), it was pointed out that even after cancellation of an order u/s 145 (5), Criminal Procedure Code, the Magistrate had jurisdiction to direct restoration of the attached crops or their proceeds to the party from whose possession they were taken.

To a similar effect is the decision of the Allahabad High Court reported in *Rajdeo Singh Vs. Emperor through Sadloo and Others*, , where it was observed that though a proceeding u/s 145 terminated on cancellation of the order under Sub-section (5) of that section, the Magistrate had jurisdiction to pass incidental orders relating to the attached property. Doubtless, in neither of these decisions was it expressly observed that Section 517 (1), Criminal Procedure Code, would apply to cases of this type. The cancellation of an order u/s 145 and the dropping of the proceeding under that section, would both amount to the conclusion of the enquiry under that section, as distinct from the completion of such enquiry.

There is a slight distinction between "completion" of the enquiry u/s 145. Criminal Procedure Code, which is dealt with in Sub-section (8) of that section and "conclusion of the enquiry which may arise when the proceedings are dropped (as in the present case) without the enquiry being completed. In the latter case, since there is no express provision in Section 145 itself for passing incidental orders for the disposal of the attached property, there is no special reason why the Magistrate should not invoke the power conferred by Sub-section (1) of Section 517. Criminal P. C., especially when that sub-section says that the Court has jurisdiction to pass such order as it thinks fit not only in respect of the property used for the commission of an offence tout also in respect of any property produced before it or in its custody even though, no offence in regard to it has been committed See *Rusul Bibi v. Ahmed Moosajee* ILR 34 Cal 347 (C).

4. The learned Additional Sessions Judge however modified the order of the learned Magistrate as regards the disposal of the attached property. He observed that the crops harvested from lands standing in the names of the recorded tenants should be delivered to them. As regards the nij-dakhali lands, however, he could not make up his mind as to whether during the management of the receivers, separate parcels of those lands were in possession of tenants.

He accordingly ordered that if the accounts of the receivers showed that any of the, fifteen appellants before him (second party before the Magistrate) was in possession of any parcels of those lands under attachment at the time of harvesting, then the paddy in respect of those parcels of land should be delivered to them, subject to the payment of the usual costs of harvest, etc. If, however, there was no note about the possession of any of the appellants then the harvested crops should be sold in the market and the sale proceeds deposited in Court until the parties established their rights in a competent Court.

5. On behalf of the petitioners (first party), Mr. Chatterji urged that the

receivers" reports clearly showed the possession of various parcels of Nij-dakhali lands by the various tenants. He also filed an affidavit (through the tenants) in support of this statement. In this revision it is unnecessary to decide whether the affidavit is based on a true statement of facts. This is a matter to be decided by the Magistrate while implementing the directions given by the Additional Sessions Judge.

He may, while considering the receivers" reports and other papers, ascertain if, as regards the Nij-dhakhali lands also the accounts submitted by the receivers during the period of attachment, show whether separate parcels of those lands were cultivated by members of either party at the time of attachment, and then act in accordance with the directions of the learned Additional Sessions Judge. A copy of the affidavit and its enclosures may be sent to the trial Court.

The revision petition is disposed of accordingly.