

(1970) 02 PAT CK 0022
In the Patna High Court
Case No : Criminal Rev. No. 2876 of 1969

Banarsi Prasad Verma and Sheo Shankar Prasad Singh	APPELLANT
Vs	
Bindeshwari Prasad Singh and Brahmdeo Prasad Sao	RESPONDENT

Date of Decision : 27-02-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 117(3), 144

Citation : (1970) 02 PAT CK 0022

Hon'ble Judges : S. Wasiuddin, J

Bench : Single Bench

Advocate : Indra Bhanu Singh, for the Appellant; J.N.P. Verma and Ashok Kumar Sinha, for the Respondent

Judgement

S. Wasiuddin, J

1. This application in revision is for setting aside an order passed by the Sub-divisional Magistrate Khagaria in Case No. 971-P of 1969 on 20-11-1969 ordering for the opening of the lock of a school. It may be also mentioned here that a revision against that order was filed before the Sessions Judge, Monghyr which was dismissed on 29-11-1969. The relevant facts which have given rise to this present application may be briefly stated as follows:

There is a High School, called "Bhadas High School" in the district of Monghyr. It is a non-Government recognized institution which is administered in accordance with the provisions of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (Bihar Act XIII of 1960) and the rules framed under that Act. There are two petitioners in this petition and petitioner no. 1 claims to be the Headmaster for the last ten years of the aforesaid school and petitioner no. 2 claims to be the duly elected Secretary by a Managing Committee. Unfortunately, there has been some trouble with regard to the management of the school resulting in the closure of the school. According to the petitioner during the period when the school was closed, the Sub-divisional Education Officer (hereinafter to be called as "the S.D.E.O.") in collusion with the members

of the opposite party held meeting in spite of objections and in that meeting the new members and the Secretary of the school were elected. An appeal against this was filed by petitioner no. 2 before the Director of Public Instructions, which according to the petitioners was pending at the time of the hearing and functioning of the new Committee had also been stayed by the Director of Public Instructions. The opposite party, on the other hand, contended that petitioner no. 1 was neither the Headmaster nor petitioner no. 2 was the Secretary at the relevant point of time, and that the members of the opposite party were the duly elected members under the rules framed under the Act and they formed the new Managing Committee of which opposite party no. 1 is the Secretary and opposite party no. 2 is the Headmaster. The dispute between the parties resulted in the institution of a proceeding u/s 144 of the Code of Criminal Procedure on the basis of a police report dated 15-8-1969. The aforesaid proceeding u/s 144 of the Code of Criminal Procedure was registered as Case No. 279M of 1969. A final order was passed in the proceeding by the Sub-divisional Magistrate on 16-10-1969 by which he made the order absolute against the present petitioners in this revision. Petitioner no. 1 has also preferred an appeal against his dismissal to the District Education Officer, who is said to have stayed the operation of the order regarding his dismissal. The present petitioners also filed a criminal revision against the order in the proceeding u/s 144 of the Code of Criminal Procedure to this Court which was registered as Criminal Revision No. 2558 of 1969, but the application was withdrawn as the statutory period of sixty days had expired.

2. On 28-10-1969 the present opposite party filed a petition before the Sub-divisional Magistrate praying that a Magistrate may be deputed immediately to remove the lock of the school and to prepare an inventory. On the basis of this petition the Sub-divisional Magistrate directed Shri S. Singh, Sub-Deputy Magistrate to get the office opened and to prepare an inventory of the articles. Shri S. Singh submitted a report that he could not locate the actual office of the school and sent back the record with a request that the S.D.E.O. may be asked to identify the school. On 20-11-1969 the opposite party filed another petition praying that another Magistrate may be deputed and not to ask the S.D.E.O. to accompany him and the Sub-divisional Magistrate on 20-11-1969 passed the order quoted here below and this is the impugned order:--

A petition has been filed on behalf of the petitioner Bindeshwari Singh that another Magistrate may be deputed to open the illegal lock of the H.E. School, Bhadas.

Sri Sahdeo Singly S.D.M. has submitted his report that legal action is not possible in the absence of the ascertaining the actual office building of the High School.

It is surprising that the Magistrate could not locate the office. Let Shri S. Singh do it with the help of the petitioner Bindeshwari Prasad, Secretary of the school.

This should be on 21-11-69 positively and compliance reported to the court on 22-11-69.

As against this order the present petitioners filed a revision before the Sessions Judge which was numbered as Criminal Revision No. 170 of 1969 and it was dismissed. The learned Sessions Judge was of the opinion that the impugned order had not been passed in a proceeding u/s 144 of the Code of Criminal Procedure and that it was an executive order of the Sub-divisional Magistrate which could not be subject matter of a revision under the Code of Criminal Procedure.

3. It may be also mentioned here that a supplementary affidavit was filed on behalf of the petitioners stating therein that the impugned order was also had because it was ex parte without any notice to the petitioners and without giving an opportunity of being heard.

4. A rejoinder affidavit has also been filed by the opposite party in which it has been stated that some material facts which were in the knowledge of the petitioners have been suppressed. It has been stated that petitioner no. 1 was a temporary teacher and he was appointed as a Headmaster on 11-10-1965 and that neither on the date of filing of the petition nor on the date on which this rejoinder affidavit was filed he was the Headmaster of the School and that petitioner no. 2 also ceased to be the Secretary of the School on 22-5-1969. It is said that the constitution of the Managing Committee was quite legal and that when the petitioner no. 2 could not find any place in the new Managing Committee, he began to maneuver and also filed a reference petition before the President, Board of Secondary Education and got a stay order against the newly constituted Managing Committee. It is also said that the deponent of the rejoinder affidavit, that is, the opposite party no. 1 moved the Hon'ble High Court in writ jurisdiction, vide C.W.J.C. No. 1245 of 1969 against the order of the President and the said writ petition had been disposed of on 13-10-1969 and the said order was withdrawn. It was also submitted that there is a proceeding u/s 107 of the Code of Criminal Procedure and the petitioners have been bound down u/s 117(3) of the Code. As regards the impugned order it has been stated on behalf of the opposite party that this order was passed purely in the administrative capacity of the Subdivisions Magistrate and was not in continuity to the previous proceeding and that, therefore, no revision could lie against this order.

5. The impugned order has been attacked on various grounds. One of these is that it was without jurisdiction and such an order could not have been passed in a proceeding u/s 144 of the Code of Criminal Procedure or after the disposal of the proceeding u/s 144 of the Code of Criminal Procedure. The second ground of attack is that this order virtually means removal of the Headmaster and the Secretary from their office and such an interference could not have been done by the Sub-divisional Magistrate, and that the order was also had because it was passed ex parte without notice and hearing the other side.

6. The facts which I have stated above will show that the final order in the proceeding u/s 144 of the Code of Criminal Procedure was passed on 16-10-1969 against which a revision had been filed, but it was withdrawn. This order, therefore, cannot be said to have been passed in a proceeding u/s 144 of the Code of Criminal Procedure and it also appears that this order which was passed was not in any proceeding in a criminal court. u/s 435 of the Code, the record of which is called for must firstly be of a criminal court and if it is not of such a court then the section has no application. If an officer is vested with a dual capacity, such as, an executive capacity and also as a court then if he acts in the former capacity, the order is not revisable. Under the Code of 1861 the revisional power was confined to a judicial proceeding, but by subsequent amendment the word "judicial" was dropped and it now applies to any proceeding, but, of course, the second condition as laid down in Section 435 should be present, and it is this that it should be of a criminal court. Section 439 has not got that qualification, but, in my opinion, this action has to be read for the purposes of interpretation in conformity with the words used in the preceding sections, such as, 435 and 436 of the Code. The impugned order, in my opinion, was an executive order and it has also been urged that the very fact that the case was registered as 971-P also shows that the order was not passed in any proceeding by any court, but by the Sub-divisional Officer in his executive capacity. In the case of (1) Kula Chandra Dutt Vs. Emperor, , there was some dispute about the right to possession of electric supply company and there was an order of requisition. It was held by a Single Judge of this Court that Section 561A comes into operation only when the impugned order is passed by a "Court" and if the order moved against in the High Court is one passed by an executive officer in his administrative capacity, Section 561-A is not attracted and the petitioner has remedy under law in other courts. A similar point came up for consideration in the Lucknow Bench of the Allahabad High Court in the case of (2) Ganga Prasad Vs. State and Another, and there also it was held that an order u/s 561 can be revised only if it be a judicial order and not one touching the executive and the administrative business of the court. In the case of (3) R. Subramaniam Vs. Commissioner of Police, also it was held that it must be a criminal court and an order which can be revised is one which can be passed in a judicial proceeding. Same view has been held in other decisions which were cited in this case, such as, in the cases of (4) Ahmad Din Vs. Bijha Singh, , (5) Fateh Bahadur Singh Vs. Ram Deo, and (6) In Re: Naupadu Narasimhamurti Patnaick and Others, . It has been urged by the learned counsel for petitioners that the order was not in the executive capacity because it affects a certain party. An executive order is bound to affect one party or the other and the test in such cases is to see whether it is an administrative order by the officer in his administrative or executive capacity or it is a judicial order of a court. In my opinion as held above, it was not an order as a court, and, therefore, it cannot be subject to revision under the Code in present proceeding. It may also be mentioned that the questions which have been raised by the parties are controversial in nature which also cannot be decided in High Court in revision. On a consideration of all these facts and circumstances, this revision

application is dismissed.