
(1987) 11 AHC CK 0092

In the Allahabad High Court

Case No : Criminal Misc. Application No"s. 4141 and 5789 of 1982

Bandhu

APPELLANT

Vs

Munna Singh

RESPONDENT

Date of Decision : 25-11-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 452, 454

Citation : (1988) 12 ACR 57

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

Bench : Single Bench

Advocate : P.S. Adhikari, for the Appellant; H.S.N. Tripathi and P.M.N. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

V.P. Mathur, J.—Briefly stated, the facts of the matter are as follows:

At the instance of Bandhu a police report was given by the Station Officer, Police Station Kichha, district Nainital on 27-9-77 with regard to plots Nos. 75/1/2 and 91, measuring 2 acres. On the basis of this report vide his order dated 17-10-77 the Sub Divisional Officer, Rudrapur, district Nainital, passed a preliminary order u/s 145(1) Code of Criminal procedure. Bandhu then moved an application on 18-12-77 for possession over the standing crops. A report from the police station Kichha was obtained. It is dated 23-12-77 and the learned Magistrate passed an order of attachment u/s 146(1) Code of Criminal Procedure in respect of plot Nos. 75/1 and 91/2 and simultaneously directed the parties to go to the Civil Court to have their title and possession determined. This order was reiterated on 12-9-78. Upon this Munna Singh filed a revision which was decided on 21-11-79 by the Sessions Judge, Nainital. He was of the view that the dispute originally was in respect of plot Nos. 75/1/2 and 91 measuring 2 acres only, while the attachment was wrongly made of plot Nos. 75/2 and 91/2 which were not required to be attached and about which there was no allegation of any apprehension of the breach of peace. Therefore, he directed remand of the case

to the Magistrate for proceeding according to law. The parties then led evidence before the Sub Divisional Magistrate, Rudrapur and the Sub Divisional Magistrate again passed an order in respect of plot Nos. 75/2 and 91/2 on 29-9-80 holding that Munna Singh was in possession. Bandhu again went up in revision which was allowed by the Sessions Judge, Nainital on 14-4-81 and the proceedings of the court below were quashed. Then Bandhu moved an application for release of the property in his favour. The Sub Divisional Magistrate concerned passed an order on 15-12-81 directing the Station Officer, police Station Kichha, to hand over the property to the party from whose possession it was taken. It appears that this order was not complied with for a pretty long time and, therefore, the Magistrate passed another order on 23-2-82, holding that Munna Singh was in possession and directing release of the property, namely, plot Nos. 75/2 and 91/2, in his favour. Against this order Bandhu filed a revision before the Sessions Judge, Nainital, who by his impugned order dated 27-5-82 directed remand of the case to the Sub Divisional Magistrate, Rudrapur for deciding afresh the matter in accordance with law and in the light of the observations made in his judgment. The learned Judge was of the view that the Magistrate was competent to pass the order u/s 51 Code of Criminal procedure (old), which is now equivalent to Section 452 of the new Code of Criminal Procedure. This revision was numbered as criminal revision No. 32 of 1981.

2. Against this order Munna Singh has filed the present petition u/s 482 Code of Criminal Procedure, which has been numbered as criminal case No. 5789 of 1982. Against the same order as well as the order passed by the learned Magistrate on 23-2-82 superseding his earlier order dated 15-12-81, and directing return of the properties to Munna Singh, Bandhu has filed Criminal Misc. Application No. 4141 of 1982.

3. The undoubted position is that the proceedings had already been dropped. It may be mentioned here that originally the proceedings started in respect of plot Nos. 75/1/2 and 91 but by some mistake the actual attachment on the spot was made in respect of plot Nos. 75/2 and 91/2, although the order of attachment was in respect of plot Nos. 75/1 and 91/2. Thus the order of attachment and the actual attachment were not in respect of the property originally in dispute. Since the proceedings had been dropped and were no more in existence the question is as to what should be done of the property which has been attached rightly or wrongly. Naturally the case was to be covered by Section 452 of the Code of Criminal Procedure. There is no provision in Section 145 of the Code of Criminal Procedure through which after conclusion of the proceedings a property can be directed to be returned to any person but it cannot be said that the Court is incompetent in this respect. Section 452 of the Code of Criminal Procedure lays down that when an inquiry or trial in any criminal court is concluded the court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be in possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for commission

of any offence. It was under this provision of law that the Magistrate was called upon to pass an order of return of the property and an application was moved on behalf of Bandhu. The learned Magistrate first passed an order on 15-12-81 directing the Station Officer, Kichha to hand over the property to the person from whose possession it was taken. This was a well meaning order, but it appears that the Station Officer Kichha was unable to comply with this order for one reason or the other and the learned Magistrate passed another order on 23-2-82 directing that the property be returned to Munna Singh because his possession was established on record.

4. Now against an order passed u/s 452, Code of Criminal procedure an appeal can be directed u/s 454 of the Code of Criminal Procedure and when an appeal is provided a revision will not lie. Therefore, whatever may be the position of the order dated 23-2-1982, a revision against that order was not maintainable and the learned Sessions Judge went beyond his jurisdiction to entertain the revision at the instance of Bandhu and to pass the order dated 27-5-1982. This order, therefore, is an illegal order beyond the jurisdiction of the Court passing it and has got to be quashed.

5. Against the order dated 23-2-1982 which is claimed by Baudhu to be an illegal order inasmuch as it seeks to revise the order dated 15-12-81, earlier passed by the Magistrate revision is not permissible under the law. An appeal should have been filed but since this order has not been impugned against, upto date it is a final order and cannot be ignored. The position, therefore, is that the order passed by the Sessions Judge of Nainital on 27-5-82 in criminal revision No. 32 of 1981 will have to be set aside and quashed. But no such order can be passed in respect of the Magistrate's order dated 23-2-82 which could be appealed against and in the absence of the appeal has become final.

6. In the result, application No. 5789 of 1982 filed by Munna Singh and one of the prayers in the application No. 4141 of 1982 filed by Bandhu stand allowed and the order and judgment passed by the Sessions Judge, Nainital on 27-5-1982 as detailed out above stand quashed.