

(1988) 07 AHC CK 0037
In the Allahabad High Court
Case No : Criminal Revision No. 1572 of 1982

Bhulan Ram and Ors.

APPELLANT

Vs

State of U.P.through Collector.Varanasi & Ors.

RESPONDENT

Date of Decision : 26-07-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145(8), 146(2), 401

Citation : (1988) 07 AHC CK 0037

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

Final Decision : Allowed

Judgement

V. P. Mathur, J.—This revision is directed against the judgment and order passed by Sri B. B. Agarwal, then IInd Additional Sessions Judge of Varanasi on ISj82. The learned Judge was disposing of Criminal Revision No. 103 of 1979 which was directed against the order passed on 741979 by Mr. D. P. Mishra, SubDivisional Magistrate in Criminal Case No. 16/33 of 1978 under Section 145 Cr. P. C.

2. Briefly stated, the facts of the matter are that standing crops assessed at a value of Rs. 320000 were attached in proceedings under Section 145 Cr. P. C. and handed over to the custody of Sheo Nath. Later on the proceedings under Section 145 Cr. P. C. were dropped with the order that the parties shall be entitled to half of the price of the standing crop each. The "supurdar" was called upon to submit an account. His contention was that he was liable only for a sum of Rs. 24 after adjusting the expenses that he had incurred. The Magistrate rejected the supurdar's account and directed him to deposit a sum of Rs. 300075 P. A revision was filed which was allowed and the case was remanded. The Magistrate was directed to decide the case according to law.

3. The learned Magistrate then again sat down to decide the mater and this time accepted "supurdar"s account and directed him to deposit Rs. 24. Again a revision was filed and the District and Sessions Judge Varanasi set aside the order and again directed the Magistrate to decide the matter according to law.

4. The Magistrate again sat down to decide the matter and without taking any evidence afresh issued a direction to the supurdar to deposit a sum of Rs. 300075 P. in Court or to pay 1/2 of the amount to each of the parties and on its failure to bear necessary consequences. A third revision was then filed being Criminal Revision No. 103 of 1979 It come for decision before Sri B. B. Agarwal, the then II Additional Session Judge, Varanasi.

5. The learned Additional Sessions Judge took into account the law Lald down in the case of Ram Narain v. Jakari Shukla, 1973 ACC page 335. He also considered the case of Bhagwan Singh v. Ganga Singh, 1963 AWR page 707 and the case of Baqridi and others v. Indra Vir Singh and others, 1960 Criminal Law Journal page 1531. In the light of the law Lald down in these cases he came to the conclusion that the Magistrate can not direct the "supurdar" either to render account or to deposit a specific amount of money arising out of the attached land and if he does so, the order will be without jurisdiction. He was, therefore, of the view that the accounting can only be called upon by the Civil Court and what is open to the Criminal Court is only to record a finding that the account submitted by the "supurdar" is bogus and then to proceed against the "supurdar" for breach of criminal trust. The parties will however be entitled to go in civil litigation for realisation of the amount. With this finding he allowed the revision and set aside the order of the learned Magistrate.

6. This legal position came up for consideration before a Division Bench of this Court in the matter of Jangilal v. Dwaraka Prasad and another, (1987)24 ACC (HC) 228. The cases of AJgoot Singh v. Rex, AIR 1950Alld page 490; (ii) Bhagwan Singh and another v. Ganga Singh, 1963 AWC 707 ; (iii) Baqridi and another v. Indira Vir Singh and others, 1968 Cr LJ 1531 (iv) Jhaboo v. Laxmi Narain, 1970 Cr LJ 1459 and (v) Ram Narain (vi) Jakari Shukla & another, 1973 ACC 335 were all considered by the Division Bench and it was held that they did not lay down good law.

7. It was held that where the Magistrate entrusts the property under Section 145(8) of under Section 146(2) of the Cr. P. C. to a Supurdar, the property remains in custodia legis. The only object sought by such appointment is the safe guarding of the property for the benefit of those who are ultimately found entitled to it and to ensure the preservation of the property against destruction and damage. The position of the Supurdar is that of a Custodian, who undertakes to preserve the property and to produce it in Court or to hand it over to the person in whose favour a direction is given. Actually speaking, the Supurdar represents the Court. It necessarily follows that he is under liability to account for the property placed in his custody. It is elementary that on one should be prejudiced for the act of the Court "actus curies neminem gravavit" which means that the act of the Court harms no one. The placing of the custody with the supurdar is only an interim arrangement and for some wrong on the part of supurdar, none of the parties can be made to suffer, so long as the interim arrangement continues. Ultimately the Magistrate has to make sure that the

property that the supurdar makes available when demanded, is the same which was entrusted to him and if the same is not available for valid reasons, then its equivalent money value. This necessarily involves the power to call for and scrutinise the accounts that the supurdar has to submit. Because when a supurdar takes charge of a property and because of the fact that the property is perishable, he has to sell it off after collecting it from the fields, he will be entitled to be compensated for the expenses incurred. The mere fact that there is absence of express provision empowering the Magistrate to assess the value of the property or direct its restoration to the rightful person, will be of no consequence. Such a power shall be implicit in Sections 14j(8) and 146(2) of the Code in addition to what Section 452(i) of the Code lays down.

8. Under Section 143(8) of the Code, undoubtedly the Magistrate can order for the property in the custody of the supurdar to be put to sale. It will be preposterous to argue that this power will not cover the power to assess the value of the property, in cases in which the supurdar has dissipated the property during the course of the proceedings. Therefore, the Magistrate will be perfectly competent to make an appropriate order to secure proper custody and it will follow that he can call upon the supurdar to submit accounts and pass necessary orders for depositing the amount after assessing the money value against the Supurdar. It will be too much to force a person feeling aggrieved against the wrong done to his property which was put in custodia legis, to be relegated to seek relief from the Civil Court or to file a criminal complaint or to seek investigation through police. These remedies may be in addition to an order by the Magistrate to the supurdar to submit account to examine it and then pass proper orders for the payment of the money value.

9. Under these circumstances, the order passed by the learned Additional Sessions Judge is legally wrong and cannot be upheld and it has to be held that the Magistrate has the power, to call upon the supurdar either (i) to give back the property that was attached and give in the custody to the person in whose favour the Court makes a direction, or (ii) to render account for assessment of the money value of the property, if the supurdar has already disposed it of, after adjusting the legitimate expenses incurred by the supurdar in due discharge of his responsibilities. And then the Court has to direct the supurdar to pay the balance either in Court or to the person to whom the court orders.

10. In the present case, however, I find that the learned Magistrate against whose order the Additional Sessions Judge passed the impugned order did not look into the accounts that were submitted and did not record proper finding as to what was the expense incurred by the supurdar, which he was entitled to adjust out of the sum of Rs. 3200 (which was admittedly the price of the crop).

11. The learned Magistrate, it appears, has simply placed reliance upon the finding recorded by his predecessor in the first instance, when the supurdar was called upon to deposit a sum of Rs. 3000.75. That finding was upset in provision and a fresh finding was recorded that the supurdar was only liable to pay Rs. 24.

Since that finding has also been reversed, it was necessary for the learned Magistrate to have recorded a fresh finding on this aspect of the matter, after reconsidering the evidence which was already on record or calling upon the parties to adduce additional evidence. Normally this Court does not interfere with findings of fact in revision. But in case in which the finding of fact is found to be perverse as in the present one, an interference becomes necessary.

12. In the result, the revision is allowed and the order passed by the Additional Sessions Judge on 18582 is set aside. The case is directed *logo* back to the Magistrate concerned with following directions:

(i) He will call upon the supurdar to submit his accounts afresh within a timelimit that he fixes ;

(ii) When the accounts are submitted, he will call upon the parties to the case to file their objections against the supurdar's report and accounts ;

(iii) Then he will allow the parties as well as the supurdar an opportunity to adduce evidence ;

(iv) And after recording the evidence so adduced and hearing the parties to the matter and the supurdar, he will pass necessary orders specifically fixing the amount which the supurdar is found liable to pay and directing him to deposit it in Court within the time to be fixed by him.

Revision allowed.