

(1964) 11 AHC CK 0001
In the Allahabad High Court
Case No : Criminal Reference No. 403 of 1963

Bohrey Param Sukh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-11-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 147

Citation : (1965) 35 AWR 444

Hon'ble Judges : W. Broome, J

Bench : Single Bench

Judgement

W. Broome, J.—This is a reference by the Addl. "Sessions Judge of Aligarh, recommending that an order passed by the S.D.M. Khair and Iglas on 31-8-1963, rejecting an application u/s 147 Code of Criminal Procedure be quashed.

2. The proceedings u/s 147 Code of Criminal Procedure started in the court of the Magistrate on an application presented by Bohrey Param Sukh (Chairman of the Town Area of Chharra), complaining that Nawab Rahmat Ullah Khan (the proprietor of plot No. 251A) was constructing a boundary wall round the plot, so as to interfere with the rights of user exercised therein by the Hindu public of Ghharra and the local Kan-jars. It was alleged that for many years the Hindus had been burning Holi bonfires and holding Ramlila performances (including the burning of effigies of Rawan etc.) on this land, and that the Kanjars had been using the plot as a graveyard for members of their community. The Magistrate took evidence but came to the conclusion that the Petitioners witnesses were unreliable and vague, and that it had not been proved that the plot had been used for Holi and Ramlila for 20 years or more, and further there was no evidence warranting the inference that Kanjars had ever been buried in the disputed plot. The application was accordingly rejected and the opposite party Nawab Rahmat Ullah Khan was allowed to go on with the construction of the boundary wall.

3. The Addl. Sessions Judge accepted the findings of fact arrived at by the

Magistrate, but was of opinion that it was not necessary to determine whether the Hindus of Chharra had matured any easement or customary right in the plot. According to the Sessions judge, it was sufficient if there was an "alleged right of user" which had been exercised for some time, and it was not necessary for the Magistrate to go into the question of whether a legal right had been matured or not.

4. The words "alleged right of user" appear in Clause (1) of Section 147; and all that that clause lays down is that if the Magistrate is satisfied that a dispute likely to cause a breach of the peace exists regarding any such right, he may make an order in writing, requiring the parties concerned in the dispute to appear before him and file written statements of their respective claims. Then, in accordance with Clause (1A), he was to hold an inquiry; and finally under Clause (2) of Section I (sic), "if it appears to such Magistrate that such right exists he may make an order prohibiting any interference with the exercise of such right". The wording of Clause (2) shows that it is incumbent on a Magistrate to give a finding as to whether the right exists or not. It would not be sufficient for him to say that there is an allegation of the existence of a right; he must sift the evidence and come to a conclusion that (prima facie at any rate) a legal right has been matured and is in existence, before he can pass any prohibitory order. His decision will no doubt be of a summary nature, subject to modification by civil court decree (vide Clause (4) of the section); but summary or not, there has to be a decision as to whether the right of user claimed by the applicant actually exists. The view taken by the Sessions judge in this case would obviously lead us into absurdities, for it would mean that even where the Magistrate was not satisfied that any legal right had been matured, he would still be obliged to pass a prohibitory order protecting that unmatured right, as though it had legal force, merely because the existence of a right was alleged by the applicant. I have no hesitation therefore in rejecting the recommendation made by the Sessions Judge and in refusing to interfere with the Magistrate's order, which seems to me to comply fully with the requirements of law.

5. An attempt has also been made to argue on behalf of the applicant that the findings of fact arrived at by the Magistrate are perverse (though as already pointed out, the Sessions Judge accepted those findings); but I see no justification for embarking on any reassessment of the evidence that has already been considered by the Magistrate. He has taken into account the testimony of the witnesses produced on both sides and has come to the conclusion that the evidence led by the applicant regarding long user is unreliable and has preferred to accept the testimony of the Respondent's witnesses, who depose that Ramlila has been celebrated on the disputed land for only 10 or 11 years and Holi for only 5 or 6 years. I see no reason to hold that the Magistrate's decision in this respect was in any way unjustified or perverse. 6. The reference is accordingly rejected.