

(1976) 12 AHC CK 0040
In the Allahabad High Court
Case No : Criminal Revision No. 120 of 1973

Chand Prakash Nath Misra and Others	APPELLANT
Vs	
Smt. Prem Sundari and Others	RESPONDENT

Date of Decision : 06-12-1976

Acts Referred:

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

Citation : (1977) ACR 106

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant; K. Swaroop, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—On a report submitted by the Station Officer Do-mariaganj dated 29th February, 1972, the Sub-Divisional Magistrate, Domaria-ganj district Basti passed a preliminary order on 22nd March, 1972 attaching the plots in dispute u/s 145 Code of Criminal Procedure. The parties were called upon to file their written statements by the aforesaid preliminary order passed on 22-3-1972 in pursuance of which both the parties filed their written statements as well as their evidence. The only point which requires to be mentioned at this place is that in the written statement filed on behalf of the applicant it was alleged that there was no apprehension of breach of peace and, therefore, the proceedings u/s 145 Code of Criminal Procedure were untenable. This assertion made in the written statement was also supported by the affidavits filed on their behalf. It, however, appears that the Magistrate without giving any finding on the controversy as to whether there was any apprehension of breach of peace or not decided the proceedings u/s 145 Code of Criminal Procedure in favour of the opposite party. He found that the opposite party was in possession of the disputed plots on the date of the attachment and that these plots were liable to be released in her favour. Aggrieved by the aforesaid order of the Magistrate a revision was filed by the applicants before the learned Sessions Judge. In the

revision one of the points raised was that as the Magistrate had not given any finding about the apprehension of breach of peace in the final order passed on 23rd October, 1972, therefore, the order releasing the property in favour of the opposite party was bad in law. The learned Sessions Judge negated the aforesaid ground on the basis that as a finding has already been given at the initial stage, therefore, the Magistrate was not required to give any finding on that controversy again in the final order. It was also emphasised by the learned Sessions Judge that although the plea that there was no apprehension of breach of peace had been taken by the applicants in the written statement but as it was not seriously pressed the same was not mentioned in the final order of the Magistrate. On these grounds the learned Sessions Judge did not find any merit in the revision preferred by the applicants and rejected the same. Aggrieved by the aforesaid orders of the two courts below the applicants have filed the present revision.

2. The only point that arose for decision in the instant case is whether the Magistrate is required to give a finding on the question of apprehension of breach of peace in the final order or not. It is undeniable that if a dispute relating to apprehension of breach of peace is not raised by any party in pursuance of a notice received by him after the passing of the preliminary order u/s 145(1) Code of Criminal Procedure the Magistrate is not required to give a finding on this question, at the time of the passing of the final order but in a case where controversy is raised about the apprehension of breach of peace in the written statement and evidence is also brought in support of it, the Magistrate is obliged to give a clear and categorical finding on the same. The absence of such a finding renders his judgment illegal. In *Gajraj and Others Vs. Collector Singh*, a Full Bench of this Court ruled that if a plea is raised under sub-Section (5) such a plea is not to be rejected even if the Magistrate had arrived at the conclusion under sub-Section (1) of Section 145 that there was an apprehension of breach of the peace. The Magistrate is called upon to decide this controversy again. Accordingly, in the instant case as the Magistrate did not give any finding on the question of apprehension of breach of peace while making the final order, the judgment rendered by him against the applicant is erroneous and is illegal. There appears to be no justification for the view taken by the learned Sessions Judge that the point that there was no apprehension of breach of peace was not raised by the applicants before the Magistrate and, therefore the Magistrate was not required to record any finding thereon. Neither was there any evidence before the learned Sessions Judge which could demonstrate that the plea has been given up by the applicant nor was any such evidence pointed out to me in this revision. Even the applicants had taken this point in the written statement and also filed affidavit in support thereof. It could not be presumed that they had given up the point. The grounds of revision taken before the learned Sessions Judge also disclose that the correctness of the judgment of the Magistrate had been challenged by the applicants on that ground. Accordingly, the learned Sessions Judge was not right in this case in assuming that the applicants had not pressed

the point of non-existence, of apprehension of breach of peace in the instant case. Hence the orders of the learned Sessions Judge as well as of the Magistrate are illegal and liable to be quashed.

3. In the result the revision succeeds and is allowed. The order of the Magistrate dated 23-10-1972 and that of the Sessions Judge, Basti dated 6-12-1972 are set aside. The case is sent back to the Magistrate for deciding the proceedings u/s 145 Code of Criminal Procedure afresh in accordance with law.