
(1921) 08 PAT CK 0006
In the Patna High Court

Chhedilal Marwari and Others

APPELLANT

Vs

Mahabir Prasad Sukul

RESPONDENT

Date of Decision : 04-08-1921

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 145

Citation : 64 Ind. Cas. 507

Hon'ble Judges : Bucknill, J

Bench : Single Bench

Judgement

Bucknill, J.—This is an application in a Criminal Revisional Jurisdiction matter No. 331 of 1921, made on behalf of Chhedilal Marwari and others, These persons were the first parties in certain proceedings u/s 145 of the Criminal Procedure Code, which were commenced and in which there was a decision against these applicants under circumstances to which I will now refer, as they are the cause of the present application to this Court. The facts are very simple.

2. The father of the petitioners Nos. 1 and 2 obtained, in or about the year 1916, settlement of 16 bighas of land from one Sagar Mal and since that time the petitioners father and these two petitioners have been in possession of the property. The second party, that is the respondent here named Mahabir Prasad Sukul, and others allege that through the medium of a mortgage-decree they had caused the tenure to be sold and had obtained possession of it for themselves since about 1920; it is said that in these mortgage proceedings they had joined as defendant the malik Sagar Mall. It can be understood that out of these conflicting claims a dispute arose and this seems to have occurred in August 1920. As a result of the Police report, which was drawn up on the 13th September of that year, the Senior Deputy Magistrate of Bhawalpore, after having made local inspection of the place, made an order u/s 144, Criminal Procedure Code, deciding that, the first party being in possession of the property, the second party should, under the provisions of that section, be restrained from interfering with the property. His order seems to have been dated the 7th

December 1920, it having been made final on that date. Now, apparently, an application seems to have been made to the District Magistrate of Bhagalpore by the second party, and that official, on the 6th January 1921, made an order which was of a somewhat unusual description.

3. His order reads:

I had not time to attend to this yesterday. In this case the Deputy Magistrate began by attaching the crops, always a dangerous thing to do, because it is necessary to arrive at some decision on the question of possession before the attached crops can be disposed of. For this reason it is rash to attach crops unless it is intended to proceed u/s 145, Criminal Procedure Code, to decide the question of possession. The Deputy Magistrate has decided the question of possession in a very summary manner. It is not a very easy question and I am inclined to think that it would not have cost much more time or trouble to decide it properly u/s 145, Criminal Procedure Code. This must be done now. I direct the lower Court to institute proceedings u/s 145, Criminal Procedure Code.

4. Now with regard to this order I should desire to point out two things. First of all that, although under the provisions of Sub-section 4 of Section 144, Criminal Procedure Code, it is open to any Magistrate to rescind or alter any order made under the section by himself or any Magistrate subordinate to him or by his predecessor-in-office, the purview of that section has been held not to cover a reversal of an order on grounds, which interfere with the discretionary power of the officer by whom such order was originally made, but to comprise only the rescission or alteration of the order when the reason for its having been made no longer exists or has varied in such a manner as to make an alteration necessary as a corollary. In this case I cannot see that the District Magistrate had any reason for impugning the action of the Senior Deputy Magistrate who had, upon the Police report, thought fit to deal with the matter as one of urgency, and it may be observed that, from the Police report, it also appeared very clearly that there was then an immediate likelihood of a breach of the peace.

5. The second observation which I wish to make is that even though on proper grounds a Magistrate rescinds or alters an order made by another Magistrate under the provisions of Section 144, it is not open to such Magistrate at all to direct the other Magistrate to initiate proceedings u/s 145, Criminal Procedure Code. The case of *Kailash Chandra Pal v. Kunja Behari Poddar* 24 C. 391 : 1 C.W.N. 393 : 12 Ind. Dec.928 lays down this proposition very clearly, namely, that,

In a case where a District Magistrate made an order stating that in his opinion it was the duty of the Sub-Divisional Magistrate to institute proceedings u/s 145 of the Criminal Procedure Code, he had no authority in law to direct the Sub-Divisional Magistrate to institute such proceedings.

6. In short, therefore, it would seem as if this order made by the District Magistrate was altogether ultra vires. With his order here, however, we are not

concerned, but after it had been passed the matter then went to another Deputy Magistrate of Bhagalpore who, apparently, merely in pursuance of the order which the District Magistrate had drawn up and thinking that he was bound to obey it, drew up, on the 11th January of this year, proceedings u/s 145, Criminal Procedure Code. He bases these proceedings merely upon the report of the Police which was dated the 13th September 1920, saying

Whereas I am satisfied from the accompanying report of the Sub-Inspector of Police dated the 13th September 1920 that a dispute is likely to cause a breach of the peace between the parties,

and so forth. Now after these proceedings had thus been drawn up, he came to the conclusion (quite in contradiction incidentally to the conclusion which so recently as the 7th September 1920 had been come to by his colleague) that not, the first party, but the second party was actually in possession, a change of front and of opinion which in itself is sufficiently remarkable. The matter has now been brought before this Court with the view of having this order made by the Deputy Magistrate set aside. The principal ground upon which it is contended that it should be set aside is that, at the date when the Deputy Magistrate drew up in January of this year the proceedings, purporting to act u/s 145, he had before him no information whatever, except the report of the Police issued so long ago as the 13th September 1920, upon which he could have come to the conclusion that there was, at the date when he drew up the proceedings, any likelihood of a breach of the peace. It is admitted that, in fact, he acted upon whatever information there was in the old and, I think I may call it, stale report of several months previously. It is admitted that he had no fresh information, and I have myself no doubt whatever that, no idea that it was necessary for him to satisfy himself that, at the date when he drew up these proceedings, there was then a likelihood of the breach of the peace, ever entered his head. I am confident that he, simply, and thinking that he was bound so to do, acted upon the directions very specifically and very illegally given to him by his superior officer, the District Magistrate. Now it has been argued by the learned Counsel for the respondent that time is not really of very much importance when considering the information upon which a Magistrate is induced to draw up proceedings u/s 145. I regret, however, that I cannot bring myself to accede to any such proposition. There is no doubt that it has been held over and over again that in order that proceedings should be legal u/s 145, Criminal Procedure Code, the information upon which the Magistrate purports to act must be information, which is of a character which properly satisfies him that at the date when he draws up those proceedings there was an actual likelihood of a breach of the peace. I cannot, I think, put the matter in better language than that in which it is expressed in the case of *Tarini Charan Chowdhry v. Amulya Ratan Roy* 20 C. 867 : 10 Ind. Dec. 583, a decision of Trevelyan and Rampini, JJ. There in the judgment of the Court it is said:

Under Section 145 it is necessary that there should be a preliminary proceeding,

and such order shall be in writing, stating the grounds on which the Magistrate has been satisfied that a dispute likely to cause a breach of the peace exists. Now, the proceeding in this case is dated the 15th October 1892, and it recites as its basis a report of the Sub-Inspector of the Nawapara outpost, from which it appeared to the Magistrate that there was likelihood of a breach of the peace. This report of the Sub Inspector appears to be the old report of April 1892, and this on the face of the proceedings is its only basis. We think that the Magistrate was not right, in October, in acting only upon a report dated the previous April....It is not always easy to say what interval should elapse between an information and proceeding....The likelihood which may then have existed and which might have reference to the probable breach of the peace referred to by the Magistrate, was not now what he now refers to.

6. I think that that passage explains pretty clearly what the real and proper attitude which should be taken up is with regard to this kind of proceeding. We do not know nor did the Magistrate know in January of this year whether there was or was not any likelihood of a breach of the peace between the parties, it was impossible that he should have known, for all that he had in front of him was a report of the Police dated as of a date several months earlier. Who can tell what circumstances may have taken place in the interval? It may be that the parties had settled; it may be that there was no longer any likelihood of the breach of the peace; it may be that the disciplinary action which might have been taken under the provisions of the order made u/s 144 (which it is true was subsequently set aside) had shown to the parties the inutility of continuing any dispute. At any rate the Magistrate acted, putting it at its highest, on information which was not apparently altogether applicable at the date when he drew up these proceedings. Apart from that, as I have already said, I have no doubt that he drew up the proceedings simply because the District Magistrate had ordered that they should be so drawn up. In these circumstances. I have no doubt that this order should be set aside and the application will, therefore, be allowed.

7. I cannot, of course, say whether or not it may be necessary for fresh proceedings to be drawn up under the provisions of Section 145 or any other section of the Criminal Procedure Code, that is a matter upon which the Magistrate, if he receives any fresh information satisfying him that there is a likelihood of a breach of the peace, might very properly take action.