
(1957) 04 AHC CK 0036
In the Allahabad High Court
Case No : Criminal Revision No. 1175 of 1955

Delhi Cloth and General Mills Ltd.

APPELLANT

Vs

Yograj Singh and Others

RESPONDENT

Date of Decision : 24-04-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(5), 561A

Citation : AIR 1957 All 797 : (1957) CriLJ 1376

Hon'ble Judges : Beg, J

Bench : Single Bench

Advocate : Bishun Chandra Saxena and U.N. Chatterji, for the Appellant; P.M. Verma, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a revision filed on behalf of Daurala Sugar Works which was first party in a proceeding u/s 145 of the Code of Criminal Procedure. It appears that Daurala Sugar Works had, through their manager, made an application u/s 145, Criminal P. C., alleging that the applicant was in cultivatory possession of plots Nos. 345, 331, 332, 334 and 301 total area of 12 Bighas and 8 Biswas in village Daurala at a rent of Rs. 93/- per annum; that the second party namely, Yograj Singh and others were threatening to take possession of the said plots, and that there was danger of apprehension, of breach of peace. It, accordingly, prayed that action u/s 145, Criminal P. C., be taken in the case.

2. The second party appeared in the case and filed a written statement. The proceedings u/s 145, Criminal P. C., went on in the usual way. On 15-4-1952, the proceedings terminated in the Magistrate's Court and a final order u/s 145. Sub-section (6), was passed by the Magistrate holding that the second party was in possession of the plots in dispute on the relevant date, and that the plots in dispute be released in their favour. Dissatisfied with this order, the first party went UP in revision before the Sessions Judge, who made a reference to the High Court recom-mending that the order of the Magistrate be set aside.

On 21-10-1953, a learned single Judge of this -Court accepted the reference, set aside the order of the Magistrate dated 15-4-1952, and remanded the case to the Court of the Magistrate with a direction that the parties be given a fresh opportunity to produce further evidence, and, after considering the said evidence, the Magistrate should pass a proper order on merits. In the same order, the learned single Judge further directed that the second party would continue to remain in possession of the plots till the termination of the proceedings u/s 145, Cr. P. C.

3. The case, accordingly, went back to the trial Court. After fresh evidence was recorded by the Magistrate, the second party took an initial objection to the effect that the apprehension of the breach of peace had ceased to exist, and that the Magistrate had, therefore, lost jurisdiction to take action u/s 145, Cr. P. C. The Magistrate after hearing the arguments of the parties on the point, agreed with the contention of the counsel for the second party that there was no existing danger of breach of peace. He accordingly, passed an order on 15-6-1954 cancelling the preliminary order, staying all further proceedings in the case and releasing the land from attachment. Dissatisfied with the said order, the first party filed a revision in the Court of the IInd Additional Sessions Judge, Meerut. The said revision having been rejected, the first party has filed this revision in the High Court.

4. Learned counsel appearing on behalf of the applicant in this Court has advanced a number of arguments. He has argued that the Magistrate was wrong in coming to the conclusion that there was no apprehension of breach of peace and the order cancelling the proceedings was, therefore, an erroneous one. I have gone through the judgment of the learned Magistrate, and am of opinion that his finding on this point is correct. As stated by the learned Magistrate, none of the witnesses adduced on behalf of the first party deposed that there was any existing danger of breach of peace in respect of the subject-matter of dispute. On the other hand, on behalf of the second party, Yograj Singh as D. W. 1 categorically stated that there existed no danger of the breach of peace in respect of this dispute.

The Magistrate also referred to the fact that a long period of over two years and four months had elapsed since the date of application. Further, there had been no reports of any incident showing any apprehension of breach of peace in respect of the subject-matter in dispute. The Magistrate also referred to an application which was given by Durala Sugar Works on 17-2-1954 in which the applicant stated "Talks of compromise were going on between the parties, therefore, one month's time is solicited".

A civil suit had also been filed in the Civil Court and the parties seem to be concentrating their attention on the latter suit instead of frittering them away in criminal litigation. As observed by the Magistrate, the parties seem to have their energies for the civil suit in respect of the same plots, and the nature of the dispute had been transformed in nature from physical and violent to legal and

peaceful. There was, under the circumstances, ample material before the learned Magistrate to come to the conclusion to which he did. The findings in respect of breach of peace arrived at by the learned Magistrate do not seem to have been seriously challenged before the learned Additional Sessions Judge. I, therefore, see no reason to interfere with the said finding. I must, therefore, hold that there was no existing apprehension of breach of peace, and the Magistrate's order cancelling the proceedings was a correct order.

5. The second argument of the learned counsel for the applicant is that even if the Magistrate had cancelled that Order, he should still have entered into an inquiry on the question of possession with a view to determine the person in whose favour the order of delivery of possession was to be passed. He, therefore, prays that I should remand this case to the Magistrate, and order him to make an inquiry into the question of possession for the purpose of passing such an incidental order. I find myself unable to accept this contention.

6. The learned counsel for the applicants has strongly relied on a decision of this Court reported in *Rajdeo Singh Vs. Emperor through Sadloo and Others*, . This is a decision of Agrawal J., in which the learned Judge held that when proceedings are dropped u/s 146(5) on the ground that there did not exist a dispute likely to cause a breach of peace, the Magistrate's jurisdiction to act under the provisions of Section 145, altogether ends, and as such he can only pass an incidental order relating to the attached property. If he enters into a minute examination as to the claims of the respective parties regarding the fact of actual possession on the date of the initial order he will be doing precisely what he is not empowered to do.

Therefore proceedings having been dropped there is no question of his taking arty evidence as to who was in possession, on the date of the preliminary order, if the record shows that the property was attached from the possession of a certain party, the Magistrate must be deemed to have inherent jurisdiction to restore possession of the property to that party. By doing so, he will be restoring the status quo ante. If, however, the record does not show this, then the only alternative for him is to pass an order that the attachment of the property should be lifted without saying in whose favour the release was to be effected. If the lifting of the attachment creates a danger of the breach of the peace, the Magistrate can start fresh proceedings u/s 145(1) Cr. P. C.

7. In my opinion this case does not seem to support the argument of the learned counsel. It does not say that after having quashed the proceedings on the ground of the absence of the danger of breach of peace, the Magistrate should embark upon a subsidiary inquiry or embark upon any inquiry of any kind on the question of possession. The case does lay down that, if there is anything on the record to indicate that possession was taken from any" particular party, the Court can make an order restoring the status quo ante. In view of this observation, I repeatedly asked the learned counsel for the applicant, whether there was anything on the record to" indicate that possession was taken from the first

party. He conferred his inability to produce any such material. This case, therefore, does not support him.

8. On behalf of the opposite party, learned counsel has invited my attention to a case re-reported in *Dulla Vs. The State and Others*, . In that case, I had held that once it is found that there is no danger of breach of the peace, the foundation for action u/s 145, Criminal P. C., disappear. It is not open to the Magistrate thereafter to convert itself to a Civil Court, and go on to decide the case on merits or to give a finding either on the question of title or on the question of possession for any ulterior or subsidiary purpose. It is stated that there is a conflict between the view taken by me in this case and the view taken by Agarwala J. in *Rajdeo Singh Vs. Emperor through Sadloo and Others*, .

The conflict if at all, is only apparent and not real. In both the cases it is laid down that once the Magistrate comes to the conclusion that the danger of breach of peace has ceased, the basis of action u/s 145 is gone, and the Magistrate must immediately stay his hands. He has no jurisdiction to proceed further with the case or to embark upon any inquiry for the purpose of determining the question as to which party should be awarded possession. No doubt in *Rajdeo Singh Vs. Emperor through Sadloo and Others*, , it was further observed by Agarwala J. that if the record shows that possession had been taken from any party, it was open to the Court to pass an incidental order under its Inherent jurisdiction restoring status quo ante.

There are no observations in *Dulla Vs. The State and Others*, contrary to this. In any case, this application for revision must fail according to the view taken in both the cases.

9. In the end, the learned counsel for the applicant suggested that this Court should act under its inherent powers and direct the Magistrate to make an inquiry into the question of possession for the purpose of determining the party to whom possession is to be delivered. I am unable to accept this argument. Section 561-A is not intended to enable the High Court to order a Magistrate to do something which the Magistrate has no jurisdiction to do.

10. Learned counsel further suggests that even if it was not open to the Magistrate to take any such action, this Court should, under its inherent powers, determine the question and make an order regarding delivery of possession. I do not think that this course would be either feasible or warranted by the circumstances of this case. Learned counsel for the applicant has produced before me a copy of judgment passed in civil Case (civil suit No. 699 of ,1952 in the Court of Munsif Meerut). This suit was filed by the applicant against YograJ Singh and others.

The judgment shows that the plaintiff's suit for possession over the plots in dispute was decreed. If that is so, then it is open to the first party to take proceedings for execution in the civil Court and to obtain delivery of possession from the civil Court. Learned counsel says that this would take sometime, and

action by this Court would expedite the matter. I am afraid it is not open to a Court acting u/s 145, Cr. P. C. to convert itself into an execution Court for the convenience of the parties. Section 145 is not intended to enable a party to bypass civil proceedings. The provisions of Section 145, Cr. P. C. are intended solely to prevent a breach of the peace. Once the danger of breach of peace ceases the Court becomes functus officio. Further, to utilize for the purpose of circumventing the provision u/s 145, Cr. P. C., would be an abuse of the process of the Court and not be in the ends of justice.

10a. The matter, however, is not so simple as is represented to be on behalf of the applicant. The opposite party, has filed a counter-affidavit and a judgment of the Consolidation Officer in-respect of these very plots in support of the said counter-affidavit. On basis of this judgment, it is claimed that title to the plots has been subsequently decided in favour of the opposite party by the said officer. The judgment of the Munsif is dated 21-10-1955. The Judgment of the Consolidation officer is of a subsequent date, and is dated 16-2-1957. It is not stated on behalf of the applicant that the judgment of the Consolidation Officer relates to some other property.

It is therefore, admittedly a judgment of a competent Court of a subsequent date relating to this very property. All that is stated on behalf of the applicant in its rejoinder affidavit is that It has gone up in appeal against the said judgment, it is, therefore, quite clear that the matter is being hotly contested by the parties in competent civil Courts. Under these circumstances, it will be quite improper for me to express any opinion on the merits of the respective cases of , the parties either on the question of title or on the question of possession.

Section 561-A, Cr. P. C. is not meant to obtain the opinion of the High Court on points which are already the subject-matter of contest Between the parties In competent civil Courts. To utilize Section 561-A, Cr. P. C. for this oblique purpose would to my opinion be a misuse of it. I would therefore, studiously refrain from giving expression to any opinion on the merits of the cases of the parties in these proceedings.

11. This application of revision must, therefore, fail and is hereby dismissed.