

(1957) 06 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 342 of 1957

Faqir Chand Sultani Ram and Another	APPELLANT
Vs	
Bhana Ram Mansa Ram and Others	RESPONDENT

Date of Decision : 19-06-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1957 P&H 303 : (1957) CriLJ 1450

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : B.D. Mehra, for the Appellant; H.L. Mittal, for the Respondent

Final Decision : Allowed

Judgement

Tek Chand, J.—The Additional Sessions Judge, Jullundur, has sent up this case with a recommendation that the order passed by Shri Amar Singh Bhatia, Magistrate 1st Class, Jullundur, dated 18th of June, 1956, dismissing the complaint filed in his Court u/s 145, Criminal Procedure Code, against the respondent, may be quashed and further enquiry into the matter may be ordered. Two persons Faqir Chand and Durga Das applied u/s 145, Criminal Procedure Code, to the Court of the Magistrate 1st Class, Jullundur, complaining that they apprehended breach of the peace as a result of a dispute between the Balmikis and Ad Dharmis of Kartarpur, Tehsil and District Jullundur, with respect to the vacant piece of land.

The petition was presented on the 18th of June, 1956, and after recording the statement of Faqir Chand petitioner the Magistrate at once proceeded to judgment and made a sketchy order dismissing the complaint being of the view that he was not satisfied that a dispute likely to cause a breach of peace existed. Against the order of dismissal the petitioner submitted a revision petition to the Additional Sessions Judge praying that further enquiry should be ordered. The Additional Sessions Judge while forwarding proceedings to this Court for revision, is of the view that the Magistrate acted illegally in disposing of the application u/s

145 without recording any evidence- The Additional Sessions Judge is of the view that it is not open to a Magistrate to refuse to take evidence on behalf of a party merely because he thought he was satisfied from the written statements of the parties that the allegation in the complaint was not a correct one. The Additional Sessions Judge has referred to *Biswanath Mahapatre v. Shivanand Saraswati* AIR 1921 Pat 308 (A), *Ferasat Ali Mulik Vs. Priamboda Devi*, *Shiamsundar Lal v. Sheo Parshad* AIR 1053 All 505 (B-1) and *Srcemanavedava Raju v. Parapravan Naidu* AIR 1920 Mad 566 (C) in support of his view. In this case the Magistrate not only did not receive the oral evidence but refused to issue notice to the respondent.

2. Mr. Bhagwan Dass Mehra appearing on behalf of the petitioner has supported the recommendation of the Additional Sessions Judge, which is being opposed by Shri H. L. Mittal who appeared for the respondent. u/s 145-(i) Criminal Procedure Code, when a District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class is satisfied from the police report or other information that a dispute likely to cause a breach of the peace exists concerning any land etc. within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

3. The intention of the Section is to provide a speedy remedy for the prevention of a breach of the peace arising out of dispute in respect of immovable property. Before making a preliminary order, the enquiry, which is contemplated, may not be detailed. The enquiry contemplated is for purposes of satisfaction of the Magistrate, which may be either from a police report or other information suggesting the necessity for taking action. The purpose of Section 145 and allied provisions is to prevent the immediately apprehended breach of the peace which purpose in all likelihood may be defeated by a prolonged enquiry extending over several hearing. If for any reason the enquiry is delayed and a preliminary order is not passed, the whole object of this section may be frustrated.

It is only after a preliminary order under Sub-section (1) is passed that further proceeding can be initiated. The Magistrate, however, has to state in the preliminary order the grounds for his being satisfied as to the likelihood of a breach of the peace. The provision as to stating the grounds of the Magistrate being satisfied as to there being an apprehension of a breach of the peace is mandatory. Despite the fact that Section 145 is adapted to cases of urgency it is not possible to lay down any hard and fast rule as to the Sufficiency of the material which has to be produced before a Magistrate for his satisfaction.

This must vary *ex necessitate rei* with the facts of each case and in accordance with the particular exigencies. No doubt after the entire material is placed before a Magistrate he alone has to judge whether he should exercise his discretionary powers, but the question in this case is, whether it is open to the Magistrate to exclude the very material which a party wants to place before him for purposes

of his satisfaction. , If the Magistrate could be deemed to have power u/s 145 to refuse the reception of the necessary data, the danger would be, that recourse to Section 145, could be effectively prevented because of the Magistrate's refusal to place on the record facts, on the strength of which, an apprehension of a breach of the peace could be reasonably inferred.

Once there is information placed before the Magistrate, the High Court would not go into the sufficiency of the information for purposes of the satisfaction of the Magistrate. The initiatory order u/s 145(1) depends on the satisfaction of the Magistrate alone. It is, however, not possible to stretch the Magistrate's discretionary power further than that. I cannot subscribe to the view, that it is open to the Magistrate first to refuse to receive information and then to decline to pass a preliminary order on the ground that he is not satisfied as to the existence of a prima facie case disclosing a reasonable apprehension of the breach of the peace.

4. The words "satisfied" is a term of considerable expansiveness. The term "satisfied" has been understood to mean, free from anxiety, doubt, perplexity, suspense or uncertainty. In this context it is synonymous with, "convince the understanding; or "convince beyond a reasonable doubt". In order that a Magistrate be relieved of all doubts or uncertainty and for his mind to be reasonably certain or free from doubt, it is necessary that he should permit parties concerned to place before him sufficient material, justifying initiation of the proceedings.

5. The word "satisfied" has of course several other technical meanings some of which are of quite diffusive significance. In relation to the claims or debts, contracts, mortgages and executions, "satisfied" is equivalent to discharged, extinguished, paid released etc. but this is obviously not the sense in which this word is understood in Section 145.

6. Satisfaction for purposes of judicial determination must depend on sufficiency of facts placed before the Magistrate. No doubt the satisfaction is to be of the Magistrate resting on the discretion vested in him; but such discretion is not arbitrary and must be a sound judicial discretion, and which should be regulated according to known rules of law. In its nature, it is more a legal than a personal discretion. It is essentially objective in its character-i. e. depending on the facts and materials before the Magistrate rather than subjective and resting upon his caprice or predilection. Before passing the initiatory order and in order to confer jurisdiction there should be sufficient material justifying apprehension of a breach of the peace, which was the sole purpose before the mind of the Legislature.

The intention underlying the procedure prescribed under this section is prevention of a breach of the peace. The other elements which must co-exist are. that the dispute must be concerning, actual possession of land or water situated within the local jurisdiction of the Magistrate. In order to effect this purpose a

Magistrate is not in any way restricted to the materials he might make use of for basing his conclusion, except of course that he is bound to satisfy himself, that there are reasonable grounds as to the imminence of a breach of the peace. The Magistrate must in his order be in a position to present clear and rational grounds, capable of being estimated as having a reasonable nexus between the real facts and the apprehended disturbance of peace.

It is true that the moment it is found that there is no likelihood of a breach of the peace, the jurisdiction of the Magistrate ceases and therefore it is a very important decision for the Magistrate to make whether there is likelihood of a breach of the peace. He cannot refuse to receive material which a party may want to place for persuading him to pass a preliminary order. In *Emperor v. Munnulal* AIR 1935 Nag 78 (D), it was emphasized that the provisions of Sub-section (1) of Section 145 must be observed in spirit and the making of a preliminary order should not be allowed to lapse into a mere routine as if it were the filling up of a printed form.

In the case of a police-report made to a Magistrate, suggesting initiation of proceedings under this section, there must be stated grounds for apprehension of a breach of the peace in order to enable the Magistrate to form his judgment. In *Nittyannarid Roy v. Paresh Nath Sen* ILR Cal. 771 (E), the Magistrate had omitted in the initiatory order to state the grounds for his being satisfied as to the likelihood of a breach of the peace, and there was no record of the information obtained by him in the course of that enquiry. The order of the Magistrate in the circumstances was set aside as it was held that in a case initiated upon a police report or other information, which had been reduced to writing reference could be made to the materials upon which the Magistrate acted, to ascertain whether there were in fact grounds upon which he might have acted.

It was the duty of the Magistrate to state the grounds upon which he was satisfied that there was likelihood of a breach of the peace. A fortiori, it follows that the Magistrate who is required by the statute, to state the grounds of his satisfaction, as to the existence of the likelihood of a breach of the peace, he must permit to be produced the material on the basis of which he has to express his satisfaction. If the Magistrates were allowed entirely to have a free hand, uncontrolled and unregulated by any rules of logic or equity, the result would be that the grant or refusal of initiatory order would depend upon his caprice or whims.

The law while giving to the Magistrate ample latitude, insists, that in his preliminary order, the Magistrate must set out the grounds which are the basis of his satisfaction. Conversely, it follows that the reasons on the basis of which he declines to pass the initiatory order must also be stated, otherwise it will become impossible for the Court of revision to appraise the soundness or justification for his order. In *Jagomohan Pal v. Ram Kumar Gope* ILR Cal 416 (F), a Division Bench of Calcutta High Court, expressed the view that the order of a Magistrate

instituting proceedings u/s 145 of the Code of Criminal Procedure should set out the grounds on which he is satisfied that a dispute likely to cause a breach of the peace existed, and the parties to the proceedings should be given an opportunity of adducing their evidence.

7. In this case it is obvious that the Magistrate has not exercised a proper discretion, in refusing the applicant to place material before him, from which, he could satisfy himself as to the existence of the grounds indicating imminence of the breach of the peace. It has been suggested by the learned counsel for the respondent, that in fact there has been no breach of the peace, but that, to my mind, is a fortuitous circumstance in a particular case and on its basis, it cannot be suggested that the Magistrate is free to receive or refuse material which an applicant apprehending a breach of the peace might like to place for his satisfaction.

8. The learned Additional Sessions Judge has referred to four rulings which to my mind are not in point. In AIR 1921 Pat 308 (A), all that was stated was, that the Magistrate, in a proceeding u/s 145 of the Code of Criminal Procedure has jurisdiction to curtail the number of unnecessary witnesses upon the ground that their examination would delay and possibly defeat the ends of justice. But this is not the proposition that throws any light upon the question referred to this Court. In AIR 1920 Mad 566 (C), it was held that where a Magistrate declines to receive oral evidence in an enquiry u/s 145, his proceedings can be revised by the High Court. But this proposition again does not help as the enquiry in that case commenced after the proceedings u/s 145(1) had been initiated. In the case before me the Magistrate has declined to initiate proceedings. In *Shiamsundar Lal Jain Vs. Sheo Parshad*, also proceedings under Section 145(1) had been initiated and it was at a later stage while instituting enquiry as to possession under Sub-Section (4) that the Magistrate had refused to take evidence on behalf of a party. The case reported in *Ferasat Ali Mulik Vs. Priamboda Devi*, is an authority for the proposition that a Magistrate has no jurisdiction to make an order u/s 145 without any evidence being adduced before him. But in the brief Judgment there is no indication as to the stage at which the proceedings were, and I cannot consider this case to be an authority for the proposition contended for by the learned Additional Sessions Judge.

9. Mr. Mittal has referred me to *Jhanda Ram v. Topan Ram* AIR 1922 Lah , 434 (G-H), which is not a ruling in point. All that it lays down is that Section 145 does not require the Magistrate to give a finding in his final order that there is likelihood of a breach of the peace because-after he had made an order in writing under Sub-section (1) the only matter which he has to determine is the question of the possession of the disputed property. This ruling does not decide the question that has arisen in this case. In *Velur Devasthanam Vs. A. Sambandamurthi Nainar*, a single Judge of that High Court expressed the view that when a Magistrate comes to the conclusion that there is no longer any apprehension of a breach of the peace it is his duty to drop further proceedings u/

s 145 leaving it open to the parties to resort to the appropriate remedies in a civil Court and this can be done at any stage.

It is not obligatory for him to take evidence before dropping proceedings, and need not give an opportunity to the parties to establish the contrary. In this case a preliminary order had been passed u/s 145(1) and then the party in response to the preliminary order came and satisfied the Court that there was no likelihood of the breach of the peace. To the same effect are two other authorities of the Madras High Court reported as G. Suryanarayana Vs. Sree Raja Ankineed Prasad Bahadur and Others, and Narasayya v. Venkiah ILR Mad. 232: (AIR 1952 Mad. 1252) (K). These authorities do not present solution to the question now before me. I am afraid that the authorities cited at the Bar cannot be relied upon for justifying or setting aside the order of the Magistrate.

10. For the reasons stated in the earlier part of this judgment I agree with the learned Additional Sessions judge that the Magistrate was in error in declining to receive oral evidence add that he did not appreciate the real significance of the duties cast on a Magistrate while disposing of the matter arising u/s 145(1). I set aside the order of the Magistrate and direct that the applicant may be enabled to place material upon the record in support of his application u/s 145, Criminal Procedure Code, before the Magistrate comes to the conclusion as to the desirability of passing . or refusing the preliminary order.

11. Parties, through their counsel, are direct ed to appear before the Magistrate on 5th of July, 1957.