
(1949) 01 P&H CK 0005
In the Punjab And Haryana At Chandigarh

Gainda Lal Sharma

APPELLANT

Vs

Bishamber Nath Kumar

RESPONDENT

Date of Decision : 07-01-1949

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(1)

Citation : (1949) CriLJ 573

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Judgement

Harnam Singh, J.—Biebambar Nath made an application u/s 145, Criminal P. C, in the Court of the Resident Magistrate, New Delhi, on 8th July 1948, complaining that he had been forcibly and wrongfully dispossessed of the premises known as "Express Motor Garage" situate in M. Block, Connaught Circus, Delhi, by Pandit Gainda Mai respondent. Paragraphs 3 and 4. of the application run:

(3) That according to the terms of the agreement between the parties all the accounts of the said shop were to be, and have been, operated solely by the petitioner who has been in possession of the said shop with its yard and the business carried on there.

(4) That on 26th June 1948 the petitioner's son along with a Chowkidar was sitting in the shop premises when the respondent with several others came there and dragged them out and forcibly put his own lock on the premises, The petitioner wished to take action for his forcible dispossession but the respondent induced him to stay his hands on the assurance that the matter would be settled and that the possession of the petitioner over the shop would be restored.

2. The Magistrate recorded the statement of Bishambar Nath on oath on 31st July 1948. In that statement the applicant stated that there was a shop situate in Connaught Circus, M. Block, New Delhi, known by the name of "Express Motor Garage" and that he was in possession of that shop. He added that he had

invested a sum of us. 27,000 on that business and that the opposite party was his partner in that business. He continued and stated that he was in possession of the said shop and was managing the said shop himself and it was on 26th Jan 1948 that the respondent put his own lock on the aforesaid premises.

3. The Resident Magistrate, thereupon, acting u/s 145(1), Criminal P.C., passed the preliminary order which reads.

Whereas I am satisfied from the information placed before me by Bishambar Nath applicant that then exists a dispute between the parties, i. e., the applicant and Gaiinda Lai Sharma, likely to cause breach of peace, concerning the shop and garage in M. Block, Connaught Circus, New Delhi, in the limits of my jurisdiction, inasmuch as the respondent has forcibly dispossessed the applicant from the premises, that he has put in his own signboard "Krishna Motor Garage" in place of the "Express Motor Garage" already existing, and that he has done other untoward acts mentioned in the application, I consequently order the aforesaid parties to attend this Court on 14th August 1948 and to put in written statements with respect to complaint in respect of the actual possession of the shop.

4. It appears that Pandit Gaiinda Lal put in an application on 9th August 1948 praying inter alia for the quashing of proceedings u/s 145, Criminal P. C. He put in a written statement on 30th August 1948 and supported his pleas by his own affidavit.

5. Before coming to the merits of the case I may state that no evidence was recorded in the trial Court and that on the written statements of the parties the Resident Magistrate has passed an order on 21st September 1948 by which he has dismissed the application u/s 146, Criminal P. C., on the ground that Section 146, Criminal P. C. was not applicable to the facts of the case. He has, however, directed that the possession of the "Express Motor Garage" should be restored to the parties, they being in joint possession. On the finding that the application was not competent within the meaning Section 145, Criminal P. C., the Resident Magistrate has no jurisdiction to direct that the possession of the "Express Motor Garage" should be restored to the parties, they being in joint possession.

6. The sole question in these proceedings is whether the applicant was in possession of the property in dispute within two months of the date of the preliminary order.

7. Mr. Balraj Tuli cites Wazir Chand v. Dr, Bawal Chand Fakir Chand AIR 1947 Lah. 227 : 48 Cri. L. J. 844 wherein Aebhru Bam J., held:

In a proceeding u/s 145, Criminal P. C. it is for the Magistrate to decide which party was in possession at the date of the initial order, and if the finding of the Magistrate as to possession is based on evidence and there was material before him on which he could come to such a finding, he is the only Judge as to whether the material was sufficient or not and if upon the material placed before him, he

is satisfied that one of the parties is in possession his order cannot be deemed to be without jurisdiction, and cannot be interfered with by the High Court on revision.

He contends on the basis of *Wazir Chand v. Dr. Bawal Chand Fakir Chand* A.I.R.1947 Lab. 227 : 48 cri. L.J. 811), that inasmuch as the applicant was admittedly not in possession of the "Express Motor Garage" on the date of the preliminary order his application u/s 145, Criminal P. C., was rightly dismissed. Now, the Magistrate has to decide on enquiry and give a finding as to whether any and which of the parties was in possession of the property in dispute at the date of the preliminary order. The exception to this rule is the case where one of the parties had been forcibly and wrongfully dispossessed within two months of the date of the order, in which case the Magistrate has to treat such person as having been in possession at the date of the preliminary order, under the proviso to sub-a. (4) of Section 145. Except as provided by this proviso the Magistrate is not concerned with previous possession or with the question as to how the possession was obtained. The facts of the case reported in *Wasirchand v. Dr. Bawalchand Fakir Chand* A I. R. 1947 Lah. 227 : 48 Cri. L. J. 844, show that the applicant was in possession of the immovable property in dispute on the date of the preliminary order and, therefore, no question arose under the proviso to Sub-section (4).

8. In the present case, no evidence has been recorded at the trial and the decision of the Magistrate proceeds upon the finding that the applicant had acquired no interest in the premises on the basis of the partnership deed. As stated above Section 145, Criminal P. C., is concerned solely with actual possession and the question how the party came into possession is not the matter for enquiry in criminal proceedings under that section nor is the Magistrate concerned with rightful possession or is competent to deal with right to possession. That being so after having passed the preliminary order the question before the Magistrate was whether the applicant was in possession of the premises on the date of the preliminary order or he could be treated as being in such possession of the said subject under the first proviso to Sub section (4).

9. Again, the Magistrate cannot decide the question of actual possession of the property in dispute on no evidence at all, or merely on the written statements of the parties. Sub-section (d) provides:

The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary and, if possible, decide whether any and which of the parties was at the date of the order before-mentioned in such possession of the said subject. Provided that, if it appears to the Magistrate that any party has within two months next before the date of sub. order been forcibly and wrongfully dispossessed, he may treat the party as if he had

been in possession at such date.

10. It would appear that the procedure prescribed for an enquiry under sub-B. (4) of Section 145 has not been followed and the application has been dismissed on the finding that the applicant had under the partnership deed acquired no interest in the premises known as the "Express Motor Garage."

11. That being so, I allow Criminal Evn. no, 617 of 1948 and remand the case for enquiry and disposal in accordance with law. In view of my findings the connected Evn. Petn. No. 441 of 1948 fails and is dismissed.

12. The result is that the case goes back to the Magistrate for disposal who shall receive all such evidence as may be produced by the parties, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and if possible decide whether any and which of the parties was at the date of the preliminary order in possession of the subject of dispute or shall be treated as being in possession of the said subject on that date and in case he decides that the applicant should under the first proviso to Sub-section (4) be treated as being in possession of the said subject, he shall issue an order declaring the applicant to be entitled to possession thereof until evicted therefrom in due course of law and restore the possession of the immovable property in dispute to the applicant.

13. The parties are directed to appear before the Resident Magistrate on 21st January 1949.