

(1983) 08 AHC CK 0013
In the Allahabad High Court
Case No : Criminal Revision No. 2146 of 1982

Harish and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 25-08-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 145(3), 145(5), 145(6)
Evidence Act, 1872 — Section 43

Citation : (1983) 08 AHC CK 0013

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Advocate : G.P. Mathur, Daya Shanker Misra and H.N. Sharma, for the Appellant; G.S. Hazela, A.G.A. and Satish Trivedi, for the Respondent

Judgement

N.N. Sharma, J.—This revision is directed against order dated 18-11-1982 passed by Sri. B.B. Agarwal, learned IV Additional Sessions Judge, Moradabad who allowed Criminal Revision No. 130 of 1982 preferred by opposite parties 2 and 3 and set aside the order dated 6-8-1982 of City Magistrate, Moradabad attaching the property in dispute u/s 146(1) of the Code of Criminal Procedure in Case No. 97/11 of 1982.

2. It appears that dispute relates to plot No. 20 measuring 0.78 decimal situated in Peerzada street of Moradabad City. On 18-6-1982, Harish through Abdul Gafoor and Chhuttan, who are alleged to be his Mukhtar-a-am, applied in the court of City Magistrate, Moradabad for action under Sections 145/146(1) of the Code of Criminal Procedure about the said land against Vakil Ahmad and Jamil Ahmad.

3. Learned Magistrate invited report of S.O. Katghar. He also recorded statement of Sri. Jiya Nand Sharma, the then S.O. Katghar on 22-6-1982 and was satisfied that there was apprehension of breach of peace and so after considering the nature of dispute and likelihood of breach of peace, recorded a preliminary order

requiring the parties concerned to put-in their written statements about their respective claims. As the learned Magistrate considered the case to be one of emergency, so he attached the subject of the dispute u/s 146(1) of Code of Criminal Procedure.

4. The matter was carried-up to the revisional court by opposite parties 2 and 3 the revision was allowed by Sri. B.B. Agarwal, learned IV Additional Sessions Judge, Moradabad on 18-11-1982 who held that these proceedings were not maintainable. It was Criminal Revision No. 130 of 1982. Learned Judge found that although the order of attachment was not revisable yet the proceedings were liable to be quashed as it was a composite order. He pointed out that in an earlier proceeding about the same property, possession of Vakil Ahmad and Jamil Ahmad had been up-held. No appeal or revision was filed against that order. That order was binding on all concerned. Thus, he allowed the revision by the impugned order.

5. I have heard learned Counsel for the parties and perused the record. It was conceded before me on behalf of opposite-parties, that interlocutory order recorded by learned City Magistrate, Moradabad on 6-8-1982 was not revisable. The point is well covered by Indra Deo Pandey v. Smt. Bhagwati Devi 1981 ACR 173 : 1981 ACC 371 which posited:

Code of Criminal Procedure, 1973, Sections 145, 146(1), 397(2) Scope of Section 397(2) Interlocutory order-Meaning of-Order during pendency of proceedings u/s 145 attaching property is purely interlocutory order within the meaning of Section 397(2).

6. Learned Sessions Judge has referred to the following rulings in support of his order, viz.;

Indersingh and Others Vs. State and Others, ; Jainath Pati Vs. Ramlakhan Prasad and Others, ; Nata Padhan and Others Vs. Banchha Baral and Others, ; Raghunath Behera and Others Vs. Purna Chandra Mahanta and Others, ; Raghunandan Pandey v. Kishin Mohan Singh 1977 IC 1005; Parag v. Mst. Ram Dulari 1943 CriLJ 459.

7. Before scrutinising the legal position, it may be pointed out that the present revisionists viz. Harish or his Muktar-a-am were no parties to earlier proceedings viz. Smt. Lakhshmi Devi v. Nabi Mohammad, Criminal Revision No. 52 of 1980.

(i) Indersingh and Others Vs. State and Others, , relied upon by learned Sessions Judge is not in point. In that case, arising out of proceedings u/s 145 of Code of Criminal Procedure, learned SDM, before whom the proceedings were initiated, referred the question of possession to civil court. A revision application was preferred against that order before learned Sessions Judge who up-held the order of Magistrate. Magistrate recorded the order on the basis of the decision of civil court regarding question of possession. This case is no authority on the point that an order recorded u/s 145(6) of Code of Criminal Procedure is an order in

rem or operates as bar to subsequent proceedings.

(ii) In *Jainath Pati Vs. Ramlakhan Prasad and Others*, , it was observed that the order of Magistrate has reference to subject matter of dispute than to the parties concerned. Obviously, the order recorded by the Magistrate u/s 145 of Code of Criminal Procedure is based on a summary enquiry about possession over the subject matter of dispute which is immovable property. In that case in an earlier proceeding u/s 145 of Code of Criminal Procedure, an order was passed in favour of Jainath Pati, the first party, Nand Ram, Ram Lal and Sita Ram were opposing Jainath Pati and others including one Ram Lakhan Prasad. It was pointed out that in cases in which the same parties were interested, it was the duty of the court to up-held an earlier order or not to enter upon any further enquiry. In the instant case, it has been shown that revisionists were not parties in Criminal Revision No. 52 of 1980, *Smt. Lakshmi Devi v. Nabi Mohammad*, nor they claimed any right through her.

(iii) *Nata Padhan and Others Vs. Banchha Baral and Others*, simply provides that the question of title is not to be decided by Magistrate while acting u/s 145 of Code of Criminal Procedure. Magistrate gets jurisdiction to act u/s 145 of Code of Criminal Procedure when there is a dispute likely to cause breach of peace concerning any land.

(iv) In *Raghunath Behera and Others Vs. Purna Chandra Mahanta and Others*, , the dispute related to a tank belonging to State transferred that tank to Kapundi Gram Panchayat. From 1961 onwards the fishery rights of the tank was being auctioned. From 1964 Panchayat was doing pisciculture in the tank. Dispute arose about the possession of that tank. Secretary of the Panchayat appeared in court on 29-1-65 after preliminary order was passed on 22-8-64 and the tank had been attached. The Panchayat did not make an application to become a party to the proceeding u/s 145 of Code of Criminal Procedure nor the learned Magistrate directed the Panchayat to become a party. It was observed that the Panchayat knew about these proceedings and so an order u/s 145 of Code of Criminal Procedure was binding not only on actual parties to the proceedings but also on all persons interested in the land in dispute. There is nothing on record to show that Harish etc. had any knowledge about the earlier proceeding in Criminal Revision No. 52 of 1980.

(v) *Raghunandan Pandey v. Kishin Mohan Singh*, cited at No. 5 wrongly as 1977 IC 1005 has been referred in the earlier decision *Jhinath Pati v. Ram Lakhan Prasad* (supra) as AIR 1922 Pat 210 which lays down the effect of the order of Magistrate u/s 145 of the Code of Criminal Procedure. Such an order having reference to the subject matter of dispute is binding on the persons interested therein and it is the duty of the court to up-hold such orders.

(vi) In AIR 1943 229 (Oudh) , proceedings were initiated by one R. P was admittedly in possession over the house in dispute which was attached and order was passed in favour of R. That order was set aside in revision and possession

was ordered to be delivered to P. On an application of P about obstruction of possession by R's tenant, it was held that P could not be directed to eject the tenant of R and such order was bad. It was further observed at page 230:

The intention of the Legislature in enacting Section 145 is that the order made by the Magistrate should have reference rather to the subject-matter of the dispute than to the persons who are engaged therein; once the declaration has been made as regards possession of the land it is binding upon all persons interested therein. Once the order of the Magistrate has been made as regards the land, then it is for the person whether he be a party to the proceedings or not who disputes that possession, to take proceedings in a civil Court.

8. I have carefully perused all the rulings relied upon by the learned Sessions Judge none of which provides that an order of Magistrate passed u/s 145(6) of Code of Criminal Procedure shall be an order in rem.

9. Prior to 1898, such order u/s 145(5) of Code of Criminal Procedure was binding only on the parties to the dispute but in view of Sub-section (3) relating to the publication of the order added by the Code of Criminal Procedure 1898, it had the effect of giving notice to all interested in the subject of dispute. This point has been made clear by new Sub-section (6)(b) of 1973 Code (Act 2 of 1974).

10. However, none of these authorities lays down that an order recorded by Magistrate in such summary enquiry about the possession shall be an order in rem. An order which is not inter parties is irrelevant in another proceeding vide Section 43 of Indian Evidence Act. In *Janoki Nath Roy v. The Queen Empress*, (?) Calcutta Weekly Notes page 329, it was laid down that one of the first principles on which Courts proceeds was that the judicial proceedings cannot bind a person who was not a party to them.

11. In *Mata Bhikh v. State* 1979 ACR 454 it was observed:

An order u/s 145, Code of Criminal Procedure is an order pronounced in open court and must be deemed to be duly promulgated so far as the parties to the case are concerned.

So, it is obvious that the order is binding on the parties.

12. The matter was examined in detail in *Kamla Pandey v. Raghubir Dusadh* 1965 AWR 429. It was observed:

Proceedings u/s 145, Code of Criminal Procedure are not between all such persons as may be interested in the property to which the proceedings relate but only between such persons as are actually parties to them by reason of having been required under Sub-section (1) to attend the court and to put in written statement or by reason of having been made parties under Sub-section (7). Persons who are made parties by the court on their own application and are required or allowed to file written statement of their claim respecting possession

of the property in dispute will also stand on the same footing as the persons originally required to attend the court and file written statement and they will likewise be bound by the order passed in the proceedings. But neither on the words of the section nor on general principles is it possible to hold that persons who are not parties to the proceedings are also bound by the order passed therein merely because of their interest in the property in dispute.

13. A number of authorities, viz. Raghu v. Gujai AIR 1918 Nag. 242; Ram Lal v. Thakur Din AIR 1921 Oudh 191 ; Mst. Maya Devi v. Diwan Chand AIR 1935 Lah 115; Mian Sharif Gul v. Said Gul AIR 1941 Pesh 65 ; Shankar Vs. Rex through Wahajuddin and Another, and Shankhta Shukul Vs. Sm. Govindi Devi, were cited in support of the said view.

14. I have carefully compared the language employed in Section 145 of the Code of Criminal Procedure in the New Code as well as in the Old Code and there is nothing in the language of the New Code to justify an inference that an order u/s 145 of Code of Criminal Procedure is an order in rem.

15. Sri. Satish Trivedi, learned Advocate for opposite parties pointed out that revisionist Harish did not sign his written statement and general power of attorney had not been filed by Abdul Gafoor and Chhuttan on his behalf. So it was clearly an abuse of the process of court. This contention is also not well founded. The stage of recording evidence has not arrived so far. It shall be open to the learned Magistrate to drop these proceedings if he finds such proceedings to be an abuse of process of court or hold that Harish is simply acting through proxy and feels shy in attending the court. There was no legal bar to the initiation of these proceedings when learned Magistrate was satisfied about apprehension of breach of peace with regard to the disputed land.

16. In the result, the revision is allowed. The impugned order dated 18-11-1982 recorded by learned IV Additional Sessions Judge, Moradabad in Criminal Revision No. 130 of 1982 is set aside and the case is remanded to the Court of City Magistrate, Moradabad who shall resume the proceedings in Case No. 97/11 of 1982 and shall dispose them of according to law.

17. Send the record immediately to the court concerned.