
(1995) 03 OHC CK 0034

In the Orissa High Court

Case No : Criminal Revision No. 676 of 1994

Jagannath Bose and Another

APPELLANT

Vs

Sudhir Kumar Ray and Another

RESPONDENT

Date of Decision : 13-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 147, 148, 310

Citation : (1995) 1 OLR 591

Hon'ble Judges : S. Chatterji, J; R.K. Patra, J

Bench : Division Bench

Advocate : B. Pal, for the Appellant; A.K. Mishra, G.B. Panda and R. Pati (for opp. party No.1) and D. Das, Additional Government Advocate (for opp. party No. 2), for the Respondent

Judgement

S. Chatterji, J.—A short but interesting point has arisen in the present case. The present Criminal Revision u/s 397 of the Code of Criminal Procedure (hereinafter referred to as the "Code") read with Section 401 of the Code challenges the order dated 8-9-1994 passed by the Executive Magistrate, Cuttack in Crl. Misc. Case No. 473 of 1994 u/s 147 of the Code.

2. By the impugned order the learned Magistrate has recorded that the second party members had filed a petition u/s 148, CrPC with a prayer to make local inspection of the alleged sweeper's passage and to stay the hearing of the case till then. The first party member filed objection on the ground that Section 148 of the Code deals with local inquiry and the Court has no power to depute a subordinate Magistrate to hold inquiry. Recording the contentions of both the parties, the learned Executive Magistrate has held that he does not have power himself not being a District Magistrate or a Sub Divisional Magistrate to depute a subordinate Magistrate to hold local inquiry. However, he has observed that since local inspection cannot take the place of legal evidence, the question of making local inspection would be considered after receipt of evidence of both the parties or, at any stage, if it is felt absolutely necessary by the Court for a just and fair

decision. The petition filed u/s 148 of the Code was accordingly disposed of.

3. Being aggrieved by the said decision the present criminal revision has been filed. The learned Single Judge by order dated 5-12-1994 found inter alia that if plain and simple meaning of Section 145 or 146 or 147 of the Code is accepted, the Executive Magistrate cannot exercise the power for holding local inquiry. He has referred to a decision reported in (1994) 7 OCR 629 Krishna Chandra Patnaik v. Arati Subudhi and Anr. and has found that the view expressed is contrary to the decision reported in Sri Narain Das Gupta and Others Vs. Sri Shyam Sundar Gupta, . In Krishna Chandra Patnaik's case (supra) it was observed that procedure prescribed u/s 310 of the Code cannot be applied in a proceeding u/s 145 in view of specific provision in Section 148 of the Code. In Narain Das Gupta's case (supra) it was observed that "inquiry" as appearing in Section 148 and "other proceedings" as appearing in Section 310 may overlap each other and it would not be correct to say that in a proceeding u/s 145, Section 310 of the Code would have no application. It was observed that two provisions operate in two different fields and reference was made in the said case to an earlier decision reported in 1972 (2) CWR 1998 Batakrishna Naik v. Khageswar Kunda and Ors., where a learned Single Judge disagreed with the view of another learned Single Judge. To avoid complications the matter was referred to a Division Bench for resolving the question whether in a proceeding pending before an Executive Magistrate, there is any scope for local inquiry in terms of Section 148 of the Code.

4. With this background the above matter has been placed before us for hearing. Patiently we have heard Mr. B. Pal, learned counsel for the petitioners, Mr. A.K. Mishra for the first party No. 1 and the learned Addl. Standing Counsel for the State for the purpose of answering the question involved in the present case. We find inter alia that Section 148 of the Code clearly lays down that:

"(1) Whenever a local inquiry is necessary for the purposes of Section 145, Section 146, or Section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any cost have been incurred by any party to a proceeding u/s 145, Section 146 or Section 147, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and pleaders' fees, which the Court may consider reasonable."

5. A plain reading of Section 148 of the Code convinces us that for "local inquiry", if found necessary for the purposes of Section 145, Section 146, or

Section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him. Section 148 of the Code thus lays down the procedure of holding local inquiry by a delegated authority. It further indicates, inter alia, that such power can be exercised either by a District Magistrate or by a Sub-divisional Magistrate.

6. Section 310 of the Code clearly indicates with regard to "local inspection". It provides that:

"(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost."

7. By looking at Sections 148 and 310 of the Code it appears that there is no scope of overlapping the concept of local inquiry by a delegated authority as envisaged u/s 148 of the Code which is quite distinguishable from local inspection to be made by the trial Judge or Magistrate, as the case may be, as provided u/s 310 of the Code.

8. Our attention has been drawn to the case reported in Deo Prasad Saha and Others Vs. Ravi Ravidas and Others, where a learned Single Judge of the Patna High Court was pleased to hold that Section 145 of the Code falls within Chapter X of the Code which relates to maintenance of public order and tranquillity and so far as Section 310 of the Code is concerned that falls in Chapter XXIV which deals with general provisions as to inquiry and trial. By referring to the scope of Sections 148 and 310 of the Code it has been made clear in the said case that the learned Magistrate will apply Section 148 of the Code in making local inquiry.

9. Our attention has been drawn to a case reported in Sri Narain Das Gupta and Others Vs. Sri Shyam Sundar Gupta, , where a learned Single Judge of this Court found that in a proceeding u/s 145 whenever any presiding officer of a Criminal Court feels it necessary for properly appreciating the evidence given in any inquiry or trial or other proceeding, he may inspect the place where offence is alleged to have been committed or any other place. The purposes and duties have been explained in paras 6 and 7 of the decision. As we have already observed, there is difference between "local inquiry" as envisaged u/s 148 and "local inspection" as contemplated u/s 310, Our attention has also been drawn to decision reported in 1983 All. LJ. 722, Satya Prakash v. State of U. P. and Anr. A Division Bench of Allahabad High Court has found that:

"There is nothing inherently wrong in a Magistrate seized of certain proceedings,

making spot inspection himself. Therefore, local inspection made in a case under Chap. X of the CrPC does not vitiate the proceedings. It is merely the wrong use made of the result of such inspection which vitiates the proceedings. Neither Section 310 which embodies the general powers contains any proviso nor is there any prohibition in Chap. X of Cr PC which may restrict the generality contained in Section 310. Chap. X is silent on the question as to whether there can be a local inspection by the Presiding Officer. The provisions of this Chapter override and prevail only in so far as they go. Since there is no provision for making of local inspection in Chap. X nor is there any prohibition in this regard nor is Section 310 subject to any exception or proviso, it must have its full operation in the field covered by it. Obedience to Section 310 is possible without disobeying the provisions of Sections 133, 143."

These aspects in our view do not throw any proper light to solve the question as raised in the present case.

10. Two aspects have been urged before us. In order to appreciate the provisions of Section 143, it has to be explained as to what will happen in case a trying Magistrate finds no subordinate to him but feels the necessity of holding local inquiry as envisaged u/s 148 of the Code and secondly, whether such local inquiry is to be held before adducing other evidence by the parties or it should be after the Conclusion of the evidence.

11. These two specific questions have not been answered in any of the citations from the Bar in this regard. Considering the contentions raised before us, we find that u/s 148 a presiding officer, if the situation so arises, can hold local inquiry at any stage of a proceeding whenever it would be found necessary. The language of the statute is very clear and unambiguous. There is no specific provision for such inquiry either before adducing the evidence or on conclusion of recording of the evidence. In fact whenever a local inquiry is necessary for the purpose as indicated above, it is up to the presiding officer to judge the situation and to find reasons for holding local inquiry as contemplated. Secondly in an appropriate case if within the scheme of the Code of Criminal Procedure, there is no subordinate Executive Magistrate as envisaged u/s 148, the trying Magistrate may refer the matter to either the District Magistrate or the Sub-divisional Magistrate, as the case may be, for the purpose of appointing any Magistrate subordinate to hold him to local inquiry as contemplated u/s 148 of the Code.

Considering this view we dispose of the criminal revision by setting aside the impugned order with the observation that the learned. Magistrate if the situation so arises, at any stage of the proceeding Whenever found necessary shall consider the application of the second party for holding an inquiry u/s 148, CrPC, and by referring, the matter to the District Magistrate or to the Sub-Divisional Magistrate for necessary appointment of a Magistrate subordinate to him to hold local inquiry in accordance with law.

R.K. Patra, J.

12. I agree