
(1987) 03 AHC CK 0096
In the Allahabad High Court
Case No : Criminal Revision No. 1834 of 1986

Jai Prakash Singh and Another	Vs	APPELLANT
Radhey Shyam Singh and Others		RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 117, 145, 145(1), 145(4)
Uttar Pradesh Land Revenue Act, 1901 — Section 40, 41, 43, 50, 54

Citation : (1987) 11 ACR 381

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : V.V. Misra, Yatindra Singh and V.K.S. Chaudhary, for the Appellant;
A.G.A. and A.K. Shukla, for the Respondent

Final Decision : Disposed Of

Judgement

B.L. Yadav, J.—This is a criminal revision u/s 397/401 of the Code of Criminal Procedure, (for short the Code), filed by the applicants, who were second party Nos. 5 and 3 against the opposite parties, Nos. 1 to 34 in a case u/s 145 of the Code. The opposite parties have filed an application before the Sub-Divisional Magistrate, Ballia for initiating proceedings u/s 145 of the Code in respect of some plots situate in village Pokhara, with the allegations that they were cultivating the plots and the crops were sown and harvested by them. The plots were situated on the border of Bihar State. The boundary between the State of Bihar and Uttar Pradesh was demarcated by the Trivedi Commission. Initially the plots in dispute were the part of village Nanijor of the Bihar State and since that time the applicants have been cultivating the plots in dispute. But after the demarcation by the Trivedi Commission these plots have come in village Pokhara and now the opposite parties are cultivating the same. But there is dispute about the cultivation, sowing and harvesting of the crops between the opposite parties and the present applicant and some other persons and there is likelihood that the breach of peace may take place at any time which may lead to untoward happenings. Hence the proceedings u/s 145 of the Code be started and

necessary orders may be passed so that the peace may be maintained.

2. The Station Officer, Haldi submitted his report on 24.1.1986. The boundaries of the plots were also given. The learned Magistrate being satisfied with the report of the Station Officer, Haldi, dated 8.12.85 and 24.1.86, passed the preliminary order on 20.3.86 and also passed an order u/s 146(1) of the Code attaching the plots in dispute and the Station Officer, Haldi was directed to keep it under his own supervision unless some other receiver was appointed. The present revision challenges these orders under Sections 145(1) and 146(1) of the Code.

3. Sri. V.K.S. Chowdhry, the learned Counsel appearing for the applicants urged that for initiating proceedings u/s 145 of the Code there must be some evidence or material to prove that a dispute likely to cause breach of peace exists. In the instant case there was no such evidence and the preliminary order passed u/s 145(1) of the Code was without "Jurisdiction. He next urged that the boundaries of the land were not indicated I that in case there was the apprehension of the breach of peace from the side the applicants, the proceedings u/s 107/117 of the Code must have been initiated, rather than the proceedings u/s 145. It was further urged that as the proceedings for record operation were in progress in the village, the rights, title and possession of the parties could have been decided in those proceedings, hence there was no justification for initiating proceedings u/s 145 of the Code and the same must have been dropped. Reliance was placed on *Sohan Lal v. State of U.P.* 1967 AWR 550, *Vinai Kumar v. Om Prakash* 1980 ACR 4, *Maqsood Ahmad Khan v. Ahmad Sayeed Khan* 1957 AWR 113 and *Ram Summer Puri Mahant v. State of U.P.* 1985 AWC 128.

4. Sri. A.K. Shukla, learned Counsel for the opposite parties, urged that there was sufficient material and evidence, including the report of the Station Officer to indicate that there was apprehension of the breach of peace, consequently, the proceedings u/s 145 of the Code have been correctly initiated, the boundaries of the plots were specified, and as there was apprehension of the breach of peace in respect of cultivation, sowing and harvesting of the crops, the proceedings u/s 145 were the only proper proceedings. It was further urged that just a preliminary order has been passed u/s 145(1) of the Code and the same was an interlocutory order, hence the revision was not maintainable in view of Section 397(2) of the Code. It was further urged that one Rameshwar Singh, who was one of the second parties, has preferred a revision before the Sessions Judge, (being Revision No. 69 of 1986) and the same was dismissed by the order dated 2.4.86, passed by the Sessions Judge, Ballia. But that Rameshwar Singh did not file the revision. But the judgment and the revision filed by Rameshwar Singh has been filed along with the memo of revision just to indicate that the revision has been decided, but the same was filed by some other person. Rameshwar Singh has been alleged to have filed the some other application u/s 482 of the Code. It was urged that as the revision filed by Rameshwar Singh was also filed for quashing the order of the Magistrate and the same was dismissed, and in that

revision the illegality of the preliminary order was challenged, the interest of the present applicants (second party) was similar to that of Rameshwar Singh, it would, therefore, inevitably follow that the present revision was barred by Section 397(3) of the Code. Reliance was placed on *R.H. Bhutani v. Miss Desai* 1969 AWR 59, *Mathura Lal v. Bhanwar Lal* 1979 ACR 505, *Jagir Singh Vs. Ranbir Singh and Another*, . He tried to distinguish the cases cited on behalf of the applicants.

5. Heard the learned Counsel for the parties. The first point which arises for determination is as to whether the order of the Magistrate was passed on any material indicating that there was any apprehension of the breach of peace. The second point is as to whether the particulars of the boundaries of the land in dispute were given. The third point is as to whether the proceedings u/s 145 of the Code ought to have been dropped in view of the commencement of the proceedings for record operation, and lastly whether the Magistrate could have started the proceedings u/s 107/117 of the Code instead of passing the preliminary order u/s 145(1) and 146(1) of the Code.

6. As regards the first point, suffice it to say that the provisions of Section 145 of the Code are couched in a very clear and unambiguous terms. There is maxim "*Absoluta Sententia Expositore non indiget*", which means that if you have plain words of a statute capable of only one interpretation, no explanation of them is required. Similarly, there is another maxim "*A verbis legis non est recedendum*", which connotes that from the words of law there must be no departure. The language of Section 145(1) is so comprehensive that either from a police report of a police officer or upon any other information, the Magistrate concerned can feel satisfied about the apprehension of the breach of peace. The word "information" has been used in a very comprehensive sense and it means that even the Magistrate can feel satisfied the moment an application is moved before him for initiating proceedings u/s 145 by an aggrieved person. The language of Section 145 provides that whenever the Executive Magistrate was satisfied from the report of a police officer or upon other information that a dispute likely to cause breach of peace exists concerning any land or water or the boundary thereof within his local jurisdiction, he shall make an order in writing. It is, therefore, obvious that the Executive Magistrate can have satisfaction either from the police report of a police officer or upon some other information that a dispute likely to cause breach of peace exists. In the instant case the application u/s 145 of the Code has been filed and there is a report of the police dated 24-1-86 (Annexure-8, page 48 of the paper book), and further there appears to be another report dated 8-12-85 submitted by the Station Officer, Haldi to the District Magistrate (Annexure-2 to the counter affidavit), indicating the apprehension of the breach of the peace. There can therefore, be no manner of doubt that there was sufficient material before the Magistrate to feel satisfied that there was no dispute likely to cause breach of the peace, and on that basis the preliminary order was passed. I, therefore, don't find any merit in the submission of the learned Counsel for the applicant.

7. There is a remarkable difference between the provisions of Sections 107 and 145. What Section 107 enacts is that when an Executive Magistrate receives information that any person is likely, to commit the breach of peace and disturb the public tranquility or to do any wrongful act that may probably cause a breach of peace or disturb the public tranquility, and is of the opinion that there is sufficient ground for proceedings he may require such person to show cause. Whereas Section 145 enacts that whenever an Executive Magistrate is satisfied from a report of the police officer or upon other information that a dispute likely to cause the breach of peace exists concerning any land or water or boundary thereof, he shall make an order in writing. The intention of the Parliament in enacting Section 145 is that in case there is any dispute likely to cause the breach of peace concerning any land or water or boundary thereof, he shall make an order in writing. Whereas Section 107 does not speak of the dispute being in connection with the land or water or boundary thereof, rather if any person is likely to commit the breach of peace or disturb the public "tranquility, the provisions of Section 107 would be attracted. However, it is for the Executive Magistrate to decide as to whether in a given set of facts the action has to be taken u/s 145 or u/s 107. In the instant case obviously the dispute was likely to cause the breach of peace concerning the land or the boundary thereof. There was no question to initiate proceedings u/s 107. The application to initiate proceedings under Section 145 as also clearly worded and the prayer was made only to the effect that the proceedings u/s 145 may be initiated. The allegations made in the application and the prayer contained therein would also be a decisive factor in ascertaining as to whether the order u/s 107 is required or the preliminary order u/s 145(1) is to be passed. In the present case the learned Magistrate quite consistent with the allegations and the prayer made in the application for initiating proceedings, passed an order u/s 145(1); and 146(1). Further it appears that "a dispute likely to cause breach of peace exists concerning any land or water or boundary thereof" u/s 145(1), is an adjective clause qualifying the earlier clause, namely, whenever". "Executive Magistrate is satisfied from the report of a police officer or upon other information. This adjective clause is lacking in Section 107 of the Code. I am accordingly of the view that the learned Magistrate was justified in not initiating proceedings u/s 107/147 of the Code.

8. *Sohan Lal v. State of U.P.* (supra), relied upon by the learned Counsel for the applicant, was a case where a civil litigation was pending and there the facts of the case were such that where the Magistrate could choose as to whether he should proceed u/s 145 or 107 of the Code, in that event it was held that he must choose the procedure u/s 107 and not u/s 145. But the facts of the present case are different. No civil litigation is pending rather just record operation proceedings under the U.P. Land Revenue Act are alleged to be pending. But that aspect would be considered subsequently.

9. As regards the point that the proceedings for record operation were in progress, hence there was no necessity to initiate proceedings u/s 145, in fact the nature of proceedings for record operation has been enacted u/s 50 of the

U.P. Land Revenue Act, 1901. Section 50 provides that where any local area is under survey operations, the record officer shall/may issue proclamation directing all the Gaon Sabhas, Bhumidhars and Sirdars to erect within 15 days such boundary marks as they may think necessary to define the limits of their villages and the fields. The civil rights are not contemplated but just the erection of the boundary marks, or in other words, in view of Section 54 of the U.P. Land Revenue Act, any dispute in respect of entries may also be decided in accordance with Sections 40, 41 and 43. But the dispute about the boundary marks or the entries during the record operations under Chapter 4 of the U.P. Land Revenue Act are not proceedings of civil nature nor they are civil litigation. I am therefore, of the opinion that even though the proceedings for record operation might be in progress, but that would not lead to the conclusion that the proceedings u/s 145 of the Code may be dropped.

10. Recently in *Ram Summer Puri Mahant v. State of U.P.* (supra), the Supreme Court has held that where a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding u/s 145 of the Code would not be justified. The parallel proceeding should not be permitted to continue and in the event of a decree of the civil Court, the criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil Court and parties are in a position to approach the civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. In the instant case the record operation proceedings for the limited purpose of erection of boundaries marks or at the best for correction of some entries may have been in progress, but that would not lead to inference that the proceedings u/s 145 may be dropped.

11. *Vinai Kumar v. Om Prakash* (supra), and similarly *Mohd. Ahmad Khan v. Ahmad Sayeed Khan* (supra), relied upon by the learned Counsel for the applicants were the cases where it was held that the mutation Court was a competent Court within the meaning of Section 146(1) of the Code. It may further be stated that u/s 146 it was provided that the Magistrate, in case of emergency or his inability to decide as to which party was in possession, can attach the plots in dispute until a competent Court has determined the rights the parties thereto. In that connection it was held that even a mutation Court can be said to be a competent Court in case it has decided the controversy about the mutation proceedings or the legality of the entries in revenue records. In the instant case there is no such evidence that any competent Court including the mutation Court has decided the case in favour of the applicants. Only this has been alleged that the record operations were in progress, but for the reasons indicated above, I am of the view that the record operations are not of the nature of civil litigation nor it was proved that those proceedings were decided in favour of the applicants. In view of the *Ram Sumer Puri Mahant's* case (supra) unless the civil litigation was pending between the parties, the proceedings under Section 145 of the Code cannot be dropped. I, therefore, do not find any merit in

this submission of the learned Counsel for the applicant.

12. The controversy can be viewed from another angle as well. Just a preliminary order u/s 145 read with Section 146(1) of the Code has been passed. Learned Counsel for the opposite parties urged that the order u/s 145(1) and 146(I) was just an interlocutory order and the revision was barred by Section 397(2) of the Code, which provides that the power of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings. It has, accordingly, to be decided as to what is an interlocutory order. In *Madhu Limaye v. State of Maharashtra* 1978 AWC 96 it was held that the rejection of plea on the point, which when accepted, will conclude the particular proceedings, will surely be not an interlocutory order but a final order. Similarly rejecting the application challenging the jurisdiction of the Court to proceed with the trial, even though may not be final in one sense, is surely not interlocutory order rather substantially it is a final order.

13. As to what is the final judgment and order has been indicated in Halsbury's Laws of England, Fourth Edition, Volume 26, para 505 as follows:

505. Final judgments and orders.-In general a judgment or order which determines the principal matter in question is termed "final". A final judgment has been defined as "a judgment obtained in an action by which a previously existing liability of the Defendant to the Plaintiff is ascertained or established" and as "a judgment obtained in an action by which the question whether there was pre-existing right of the Plaintiff against the Defendant is finally determined in favour either of the Plaintiff or of the Defendant. " A final order is none the less final by reason that it is subject to appeal, and a judgment may be final even though it directs inquiries, or deals with costs only, or is made on an interlocutory application, or reserves liberty to apply. " See *Shubrook v. Tufnell* (1882) 9 QBD 621 : *Salter Rex and Co. v. Ghosh* (1971) 2 QB 597.

About the interlocutory judgments and orders, there is a mention in para 506, which is as follows:

506. Interlocutory judgments and orders.-An order which does not deal with, the final rights of the parties, but either (i) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (ii) is made after judgment, and merely directs how the declarations of, right already given in the final judgment are to be worked out, is termed "/>interlocutory.

An interlocutory order, even though not conclusive of the main dispute, be conclusive as to the subordinate matter with which it deals.

The phrase "interlocutory judgment" is also used to describe a judgment damages to be assessed.

In *Salaman v. Warner* (1891) 1 QB 734 it was held as follows:

If their decision, whichever way it is given will, if it stands finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decisions, if given in one way will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then I think it is not final, but interlocutory.

14. In view of the aforesaid principles determining final orders and interlocutory orders, if an order is made before the judgment and it gives no final decision on the matter in dispute, but is merely on the matter of procedure and not finally dispose of the matter in dispute and permits the action to go on is an interlocutory order. In the instant case passing a preliminary order u/s 145(1) of the Code or an order of attachment u/s 146(1) of the Code and directing the parties to appear on a particular date and lead evidence to prove their respective cases, is an order made as a matter of procedure and allows the action to go on and nothing has been decided, hence it is certainly not a final order but only an interlocutory order and the revision would not be maintainable in view of Section 397(2) of the Code.

15. In *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*, it was held that no general test for finality of the order can be laid down. The "recent principle was that the judgment and order may be final for one purpose and interlocutory for the other and as final as to remaining part. The meaning of the words "final" and "interlocutory" has therefore, to be considered separately in relation to the principal purpose for which it was required. In the instant case considering these observations and applying the aforesaid test, I am of the view that if an order determines the principal matter in question, it is a final order and not an interlocutory order. As the preliminary order passed u/s 145 read with Section 146(1) of the Code did not decide the principal matter in question, hence it is an interlocutory order and the revision preferred by the applicant was barred by Section 397(2) of the Code.

16. There is yet another aspect of the matter. There appears to be a judgment dated 2.4.86 passed in Criminal Revision No. 69 of 1986 filed by Rameshwar Singh against the State of U.P. and 38 others challenging the preliminary order u/s 145 of the Code, but the said revision was dismissed. The interest of Rameshwar Singh was similar to the interest of the applicants. As a revision was filed by a person having similar interest to that of the applicants, but he was not the applicant himself, hence the provisions of Section 397(3) of the Code, which enacts that if an application in revision has been made by a person either to the Court of Sessions Judge or to the High Court, he should not be permitted to make further application in revision, even though, would not apply directly, but certainly it can be said to be made applicable constructively, just on the analogy of constructive res-judicata, a well known principle in civil law.

17. Even though I have assumed the revision to be maintainable, but technically speaking if a similar revision having similar interest as that of the applicant was dismissed by the Sessions Judge, the present revision normally should not have

been permitted to proceed or held to be maintainable in view of the clear provision of Section 397(3) of the Code. It appears that by an intelligent device the order dated 2.4.86 in Revision No. 69 of 1986 Rameshwar Singh v. State of Uttar Pradesh, has been filed, but Rameshwar Singh is neither the applicant nor the opposite party. I was informed that he has preferred an application u/s 482 of the Code. However, I am not called upon express any opinion on the merits of that application.

18. Just a preliminary order has been passed u/s 145 read with Section 146(1) of the Code. It is open to the parties to lead their evidence and to prove their possession over the land in dispute on the date of preliminary order or from two months prior to the same as required by Section 145(4) of the Code. I, therefore, do not find any merit in the present revision and the same is accordingly dismissed. The interim stay order dated 23.10.86, as extended from time to time is vacated. On account of the revision being file and the interim stay being granted by this Court on 23.10.86, the matter has dragged on for too long. Under the circumstances, however, what is required is petitions.