
(1900) 04 CAL CK 0004
In the Calcutta High Court

Joyanti Kumar Mookerjee

APPELLANT

Vs

J.B. Middleton

RESPONDENT

Date of Decision : 20-04-1900

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 145, 146

Citation : (1900) ILR (Cal) 785

Hon'ble Judges : Prinsep, J; Handley, J

Bench : Division Bench

Judgement

Prinsep, J.—The matter before us relates to an order passed u/s 145 of the Code of Criminal Procedure holding that Mr. Middleton was in actual possession of the colliery in dispute and should be so retained in possession until the matter in dispute had been settled by a competent Court.

2. The objection taken on which the rule was granted was that the Magistrate did not find actual possession on the 29th of December, the date on which he passed an order u/s 145(1) for taking proceedings under that section, but that he found possession immediately before the 10th of November, the date of the order that he had passed between the parties u/s 144 of the Code of Criminal Procedure.

3. No doubt u/s 145 it is incumbent on a Magistrate ordinarily to find actual possession at the date of his passing an order under sub-sec. 1 and the proviso to sub-sec. 4 permits a Magistrate to consider previous possession, within two months [787] before such date under the circumstances stated therein. It has been contended before us, and we think no objection can be raised to this argument that the circumstances of this case do not come within the terms of that proviso. It cannot be disputed that the Legislature could not have had in contemplation a case such as the present. The Magistrate has found that, by reason of the order u/s 144 passed on the 10th November, the possession of neither of the disputing parties existed from that date up to the date of the proceedings taken u/s 145, and consequently he has proceeded to consider the possession before the date of that order u/s 144, in order to determine who was

lawfully in possession at that time, for it may be justly considered that the exercise of any rights on such possession was merely suspended by the order u/s 144. Some recent cases have shown to this Court how disastrously an order u/s 144 may operate in regard to the exercise of private rights of parties and the present case may be added to the list of those cases. Here the order recites that there was a dispute between the parties likely to cause a breach of the peace in regard to the possession of this colliery, and it was, accordingly, ordered that "neither party should exercise any act of possession there or do anything likely to lead to a criminal breach of the peace." The result of that order has been practically an attachment of the property, and it was not until the 29th December that the successor of the Magistrate, who had passed the order u/s 144, realized the necessity for proceedings u/s 145.

4. We have found in some cases that Magistrates pass orders under Sections 144 and 145 simultaneously. In the present case they were not passed simultaneously but consecutively, and we would draw attention to the terms of Section 145, which, if properly applied, provide a perfect remedy for any disturbance of this description relating to the possession of land, inasmuch as Section 145 permits a Magistrate, who may find the case to be one of emergency, to attach the subject of dispute pending his decision under that section. An order u/s 144, it should be remembered, can be passed ex parte also only, in a case of emergency, but it remains in force only for two months, at the end of which time the cause of dispute and its probable consequences will still remain. If, therefore, a Magistrate acts at once u/s 145, and, if necessary, attaches the land--the subject-matter in dispute--he acts more effectively than by an order u/s 144, because he puts himself into a position to settle the dispute between the parties, which is likely to disturb the public peace.

5. Mr. Mehta, who appears for the petitioner, contends that inasmuch as the Magistrate could not find actual possession at the time of his order under Sub-section (1) of Section 145, he was bound u/s 146 to attach the property. We cannot agree in this. The result would be to put out of possession one of the parties at all events, who had held possession at least up to the date of the order u/s 144--an order which is declared to be only of temporary operation, and which could be passed only on an emergency to prevent an imminent breach of the peace. It might so happen that, if proceedings u/s 145 had not been taken, and when the order u/s 144 had, by lapse of time, ceased to have effect, the party in possession would be entitled to exercise his lawful right. But on the argument addressed to us by reason of the proceedings u/s 145, he would not be liable to prove his possession by exercise of such rights at the time that such proceedings were taken, because he had been restrained by the order u/s 144, and on this argument he would consequently be deprived of his possession. Thus it would follow that, by reason of the intervention of the Magistrate to prevent a breach of the peace, lawful possession would be disturbed. That could never be the intention of the Legislature. Section 146 was, in our opinion, intended to apply to a case in which, on the evidence before him, a Magistrate could not find

possession with either of the parties. It seems to us that the proper way of dealing with this case in interpreting the Magistrate's order is to hold that, whereas by reason of the operation of his order u/s 144 of the 10th November no evidence could be offered to show the possession of either party from that date up to the 29th December, he was consequently obliged to ascertain the possession immediately before this order, and to regard his intervention as an attachment suspending the previous possession whatever it might be, but that at the same time the former possession continued, and, although the lawful exercise of its rights had been forbidden for a time, the possession had never ceased to exist. In this view we think that the order of the Magistrate is correct and this rule must be discharged.