
(1966) 10 PAT CK 0023
In the Patna High Court
Case No : Criminal Revision No. 353 of 1965

Jyotish Kotwal and Others

APPELLANT

Vs

Dwarka Prosad Marwari and Others

RESPONDENT

Date of Decision : 07-10-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146(1)

Citation : AIR 1967 Patna 309 : (1967) CriLJ 1359

Hon'ble Judges : Anant Singh, J

Bench : Single Bench

Advocate : S.R. Ghosal, for the Appellant;

Final Decision : Allowed

Judgement

Anant Singh, J.—This application is directed against an order dated the 11th September, 1968, made by the Subdivisional Officer of Godda. Mr. S.K. Chaturvedi, reviving a proceeding u/s 145 of the Code of Criminal Procedure, which had been earlier dropped by the same Magistrate by his order dated the 9th September. 1953.

2. It appears that on the basis of a police report a proceeding u/s 145 of the Code was drawn up on the 3rd November, 1966, in relation to some lands situate in Mauza Dhankunda, police station Mohagama, in the district of Santal Parganas. It was after sleeping over the proceeding for about four years that on the 28th March, 1960, the Subdivisional Magistrate referred the case u/s 146 (1) to the Civil Court at Godda. The Subordinate Judge, Godda, by his order dated the 2nd June, 1962, more than two years after the reference, referred back the proceeding to the Sub-divisional Magistrate discovering that there was no formal proceeding drawn up and therefore, it was void ab initio.

3. On the 3rd July. 1962, after the reference was returned by the Subordinate Judge, the Sub-divisional Magistrate made the following order:

"Drawn up proceeding u/s 145 Cr.P.C. against both parties in respect of the

subject matter of land dispute asking them to file was affidavits and documents in support of their claims if any by 20-7-62. The lands are attached under Section 145 (4) Cr. P. C.

Put up on the date fixed (20-7-62)."

In spite of this direction made by the Sub-divisional Magistrate, no formal proceeding appears to have been drawn up until the 9th September, 1963, when the learned Subdivisional Magistrate. Mr. Chaturvedi, passed the following order:

"I have gone through the record and find that the order required to be made u/s 145 (1) has not been made in this case yet. The previous hearing and the filing of documents has been made in anticipation of such order. The whole proceeding has therefore been infructuous. This proceeding is, therefore, filed and the lands attached u/s 146 Cr. P. C. and also u/s 145 (4) Cr. P. C. are released from attachment. The document filed by the parties may be returned to them on their application."

Now, having dropped the proceeding, the learned Sub-divisional Magistrate, by the impugned order of 1963, has revived the whole proceeding on the basis of the old police report dated the 30th October, 1956. saying among other things, that he was satisfied from that report of the police that there existed a dispute between the Parties likely to cause a breach of the peace. He has added in his order:

"As I consider the matter of the breach of the peace to be one of emergency I do hereby order that the plots mentioned in the above order u/s 145 (1) Cr. P. C. which form the subject of dispute be attached u/s 145 (4) Cr. P. C. pending the decision of this or trying court."

4. I cannot, by any means, commend the performances of the learned Magistrate dealing with this proceeding. As I have indicated above, the proceeding was drawn up on the 3rd November, 1956. and the learned Magistrate could wake up some four years after on the 28th March, 1960, only to make a reference u/s 146 (1) of the Code of Criminal Procedure to the Civil Court and that without having formally drawn up any proceeding, with the result that it had to be returned by the learned Subordinate Judge on the 2nd June 1962. Again, when the record was received from the learned Subordinate Judge, an order was made on the 3rd July, 1962, for drawing up a formal proceeding u/s 145 of the Code, but no such proceeding was drawn up. On the other hand, it was dropped by the aforesaid order of the 9th September, 1963, and was revived again by the impugned order, as if the learned Sub-divisional Magistrate has no limitations of the law for him.

It may be that the dropping of the proceeding by the order dated the 9th September 1963, without indicating anything about the assertion of the apprehension of the breach of the peace between the parties was bad; but once, right or wrong, the proceeding was dropped, the learned Magistrate, by the

impugned order, could not revive it on the basis of the old police report of 1956, when there was no fresh material before him to suggest that there was any apprehension of the breach of the peace, between the parties. If there was, however, any such apprehension, he could have been within his rights, to have drawn up a fresh proceeding; but he could not by any means, revive the dead proceeding. The impugned order reviving the proceeding is therefore, bad in law being completely without jurisdiction. This application is allowed and the impugned order is set aside. It will be open to the learned Magistrate to start afresh proceeding on fresh materials, if there be any apprehension of a breach of the peace between the parties.

5. I cannot help observing that this is a case of the flagrant cases of sitting tight over a proceeding u/s 145 of the Code of Criminal Procedure, which the legislature requires to be disposed of ordinarily, within a period of two months. This case has remained pending, without any attempt having been made to dispose of it for over ten years. The then learned Magistrate, as I have said, took four years only to make the reference and that without drawing up a formal proceeding and the learned Subordinate Judge, in his turn, took only two years to discover it, which he could have done soon after the reference had been received.

6. A copy of this order may be sent to the Government as also it be laid before the standing Committee of this Court for such action as may be deemed necessary against the officers responsible for having delayed the disposal of the proceeding all these years.