
(1970) 03 GAU CK 0001
In the Gauhati High Court

K. Kulachandra Singh and Another	Vs	APPELLANT
R.K. Sanajaoba Singh and Others		RESPONDENT

Date of Decision : 17-03-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 145

Citation : AIR 1971 Guw 11 : (1971) CriLJ 225

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Judgement

R.S. Bindra, J.C.

1. The short question that arises for determination in this revision petition is whether the Magistrate has power to institute fresh proceedings u/s 145, Criminal Procedure Code, respecting immovable property while a previous order qua that property under the said provision is still in force.

2. The petitioners had secured a favourable order on 12th August, 1964, respecting a piece of land in a proceeding u/s 145, Criminal Procedure Code against one E. Gourgopal Singh. Subsequently, they moved an application on 27-11-1967 before the Sub-Divisional Magistrate complaining that the present respondents, R. K. Sanajaoba Singh, Leipaklotpi Devi and Toleima Devi, were out to disturb their possession over that land, and praying that proceedings u/s 107, Criminal Procedure Code be initiated against them. The three respondents also moved an application on the same date against the present petitioners making an identical prayer on the allegations that they were in possession of the land and the petitioners were out to disturb their possession.

The Sub-Divisional Magistrate sent the two applications to the Police for enquiry and report, and the police recommended on 14-11-1967 action u/s 145, Criminal Procedure Code. Consequently, the Sub-divisional Magistrate drew up proceedings under that provision of the law by his order dated 11-12-1967. The petitioners felt aggrieved with that order and so went in revision to the District

Magistrate, Manipur, who rejected that revision by his order dated 6th May, 1968. In the instant revision petition validity of the orders made by the Sub-divisional Magistrate and the District Magistrate is assailed.

3. It was not denied by Shri J. B. Paul, representing the petitioners, that there is conflict of authority on the point whether proceedings u/s 145, Criminal Procedure Code respecting the subject of dispute can be started for the second time while the previous order made under that Section is still in force. However, he canvassed that the more sounder View to take is that the proceedings for the second time cannot be set afoot even though the parties to the dispute for the second time are different. In support of that contention he cited the decisions in *Bahawala v. Duni Chand* 24 Cri LJ 461 AIR 1924 Lah 41 1 and *Jainath Pati Vs. Ramlakhan Prasad and Others*, The first case is of the Lahore High Court. A perusal of the report reveals that the point which arose for determination before the High Court was altogether different. There the Magistrate had directed in his final order that the complainant, in whose favour the order was made, should be restored into possession of the property in dispute. The contention of the opposite party was that in terms of Section 145, as it stood then, the Magistrate had no jurisdiction to direct restoration of possession to the successful party. The High Court accepted that contention and so modified the order of the Magistrate to bring it in accord with the provisions of the then Section 145, Criminal Procedure Code. 1 may mention in passing that Sub-section (6) of Section 145 was amended by Act XVIII of 1923 to give power to the Magistrate to direct restoration of possession to the successful party who had been forcibly and wrongfully disposed. It would be obvious that the decision of the Lahore Court is no authority for the proposition which is urged for acceptance before this Court by Shri Paul. He banked principally on the observations made by the Lahore High Court in the last para of the report which read as under:?

At the same time, if a party is declared to be entitled to possession, and the world at large is forbidden to disturb his possession, he would be entitled to take possession and no one would have any right to interfere with his doing so.

If actually the direction of the Magistrate is that the world "at large is forbidden" then it may be legitimate for a party to contend that his possession cannot be disturbed by anyone. However, in the order dated 12th August 1964 no such direction was given and so the present petitioners cannot legitimately claim that the respondents herein cannot plead their possession over the land even though they may happen to be in possession thereof. Moreover, the observations of Lahore High Court reproduced above cannot be read to mean that proceedings u/s 145, Criminal Procedure Code cannot be initiated for the second time even though the parties to the second proceedings happen to be different.

4. The second authority relied upon by Shri Paul is that of Patna High Court. Undoubtedly, it lends support to his contention. However, in a later decision of the same High Court reported in *Bindhyachal Prasad Varma Vs. Madho Singh and Others*, *Bindhyachal v. Madho Singh*, it was held that it is not correct to say that

because Section 145(3) provides for local publication, therefore the question of possession is set at rest once for all and the final order u/s 145(6) is binding on the whole world. It was held further that it is open to a Magistrate to start fresh proceedings u/s 145 in respect of the same land when the parties to the proceeding's are not the same as in the previous proceedings. In support of this conclusion the Patna High Court relied upon a Full Bench decision of the Calcutta High Court, reported in ILR (1903) Cal 155 Krishna Kamini v. Abdul Jubbar. Therefore, the latest view of the Patna High Court is against the contention raised by Shri Paul.

5. It would follow that none of the two authorities relied upon by Shri Paul is of help to him.

6. On principle, I see no legal justification for the proposition that proceedings u/s 145, Criminal Procedure Code cannot be initiated in respect of a property qua which an order under that provision of the law had previously been made. Nothing stated in Section 145 lends support to that proposition. It is elementary that judgments and orders made in judicial proceedings are binding only on the parties thereto or their successors-in-interest unless they happen to be judgments or orders in rem in which category the order of a Magistrate u/s 145, Criminal Procedure Code does not fall. If the contention of Shri Paul were accepted it might lead to highly undesirable consequences.

It is not inconceivable that two unscrupulous persons may manoeuvre the proceedings u/s 145, Criminal Procedure Code in such a way that one of them secures an order against the other without the real person disputing the possession of the successful party to the property in dispute getting any wind thereof. In such a Hypothetical case, the real disputant would suffer a grievous injury at the hands of the Magistrate if he were not permitted to agitate the question of his possession to the property. Therefore neither on principle nor on authority it is possible to subscribe the proposition advanced by Shri Paul.

7. As a result, the petition fails and is rejected.