

(1998) 01 MP CK 0036

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1128 of 1997

Kartik Gangaram Choudhary

APPELLANT

Vs

Jagtu and Others

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146(1)

Citation : (1998) 2 JLJ 390 : (1998) 1 MPLJ 386

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : S.L. Kochar, for the Appellant; P.N. Mishra, for non-applicant Nos. 1 and 2 and B.P. Athya, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

In this revision preferred u/s 401 of the Criminal Procedure Code (in short "the Code") the Second Party member in a proceeding u/s 145 of the Code calls in question the pugnability of the order passed by the learned Sub-Divisional Magistrate, Kawardha in Criminal Case No. 201/97 whereby invoking the jurisdiction u/s 146(1) of the Code he has directed for attachment of the property and appointment of a Third Party receiver.

The facts as have been unfolded are that on the basis of a police report a proceeding u/s 145 of the Code forming the subject-matter of Criminal Case No. 201/97 was initiated. On 22-5-1997 preliminary order was passed by the learned SDM and notices were issued and parties were asked to file their show cause/ written statement. According to the police report there was dispute between the present petitioner and the non-applicants in respect of huller mill situate on Khasra No. 65/5 in Village Bedarchi. In the report it was also indicated that the dispute has been continuing for the last 4 to 5 years and in the year 1992 a Criminal Case No. 56/92 was instituted for offences punishable u/s 452/392 of

Indian Penal Code. It was also mentioned in the report that due to the dispute there was apprehension of breach of the peace. On the basis of the said report the learned S.D.M. passed the preliminary order and directed both the parties to file their respective show cause. Though the matter was adjourned from time to time neither party filed the written statement. While the matter stood thus, on 15-10-1997 an application was filed u/s 146(1) of the Code by the Second Party members, the non-applicants herein, for appropriate order for attachment of the property and appointment of a receiver. In the said petition it was averred that the huller mill was situate in Khasra No. 65/2 in respect of which the Second Party members had the unquestionable title. It was also averred in the petition that from the police report it was apparent that there was apprehension of breach of the peace and the situation was quite grave which warranted exercise of jurisdiction u/s 146(1) of the Code. The aforesaid prayer was resisted by the First Party, the applicant herein, contending inter alia, that the proceeding was initiated in respect of Khasra No. 65/5 but in the petition u/s 146(1) of the Code it has been given a go-bye and a new Khasra number has been mentioned. Apart from the aforesaid, it was also stated in the objection that circumstances did not warrant for attaching the property as the conditions precedent as enjoined u/s 146(1) of the Code were non-existent. It was highlighted by the present applicant that the huller mill, in question was situate on Khasra No. 102/4 and hence the dispute relating to either of the plot was inconsequential. It was also putforth that the licence in support of the aforesaid huller mill has been granted by the competent authority exclusively in favour of the present applicant. In support of the aforesaid contentions certain documents were filed along with the objection.

The matter was heard on 28-10-1997 and by order dated 4-11-1997 the learned Magistrate passed the impugned order.

Mr. S. L. Kochar, learned counsel for the petitioner assailing the aforesaid order has contended that the preliminary order was passed on 22-5-1997 and thereafter without filing the written statement the Second Party members preferred the application u/s 146(1) of the Code for attachment of the property and appointment of a receiver though no change had occurred from the date of passing of preliminary order and the date when the petitioner u/s 146(1) of the Code was presented. It has also been putforth by Mr. Kochar that when an order is passed without recording a finding in regard to existence of emergency and in fact, in absence of existence of emergency, the said order is unsustainable. He has also canvassed that no additional report was called for from the police authority to arrive at the conclusion that there has been deterioration on the existing situation and the emergency has emerged. In support of his submission he has placed reliance on the decisions rendered in the cases of *State v. Ganga Singh* reported in 1976 J.L.J. 110 and *State v. Narayansingh* 1974 M.P.L.J. 27.

In support of the impugned order Mr. P. N. Mishra, learned counsel for the non-applicants has contended that though initially proceeding was initiated in respect

of Khasra No. 63/5, that was a mistake and there is no illegality or unjustifiability on the part of the learned SDM to accept the petition u/s 146(1) of the Code in respect of plot No. 63/2 as such a mistake could have been rectified by the Second Party members. He has also proposed that from a bare perusal of the order passed by the learned SDM it would be apparent that there was existence of emergency, hence the order passed by him cannot be found fault with.

Before I proceed to deal with the facts in the present case, I may refer to section 146(1) of the Code, which reads as follows :-

"146(1). If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute."

On a plain reading of the aforesaid provision it is clear as day that the Magistrate is authorised to pass an order of attachment on three conditions, namely, if after passing the order under sub-section (1) of section 145, he considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute. Indubitably, in the case at hand the learned Magistrate has taken recourse to the first limb of the section to invoke his jurisdiction as he has attached the property and directed for appointment of third party receiver on the ground of emergency. It is worthwhile to note here that a Magistrate after recording his satisfaction that an emergency exists, he would be justified to pass an order u/s 146(1) of the Code. The other two conditions which are enumerated in the section can form the foundation after the parties proceed to adduce evidence. Submission of Mr. Kochar, is that the impugned order does not indicate the satisfaction of the Magistrate concerned that there existed emergency calling for exercise of jurisdiction under the aforesaid provision. On a perusal of the impugned order I find that the learned Magistrate in a cryptic manner has observed in regard to existence of dispute between the parties and has observed that there is apprehension of the breach of peace. Mr. P. N. Mishra, learned counsel for the non-applicants is not in a position to dispute the fact that the satisfaction as recorded by the Magistrate really does not spell out existence of emergency for invocation of the jurisdiction u/s 146(1) of the Code. Apart from the above, it is quite perceptible from the perusal of the entire order sheet that from the date of passing of a preliminary order till the date of filing of the application u/s 146(1) of the Code nothing was brought on record to substantiate therein that in fact,

an emergency had emerged. As has been held in the cases of Ganga Singh and Narayan Singh (supra) existence of emergency should be the bedrock to confer jurisdiction on the Magistrate to pass such an order. The learned Magistrate also chose not to call for a report from the police authority to arrive at the conclusion with regard to existence of emergency. In fact, it is not in dispute that the learned Magistrate has passed the present order on the basis of the previous report. In view of the aforesaid I am of the considered view that in absence of emergency, the order passed by the learned SDM becomes susceptible and the same cannot withstand scrutiny.

Resultantly the criminal revision succeeds and the impugned order dated 4-11-1997 is set aside. However, the learned Magistrate would do well to dispose of the proceeding as expeditiously as possible preferably, by end of April, 1998. Mr. S. L. Kochar, Advocate as well as Mr. P. N. Mishra, learned counsel appearing for the parties undertake that respective written-statements shall be filed before the SDM within three weeks from today.

C.C. as per rules.