

(1968) 02 DEL CK 0001

In the Delhi High Court

Case No : Criminal Revision Application No. 34 of 1968, against order of Sub-Divl. Magistrate, Delhi, D/- 11-9-1967

K.D. Kohli

APPELLANT

Vs

K.K. Sondhi

RESPONDENT

Date of Decision : 12-02-1968

Acts Referred:

Citation : AIR 1968 Delhi 231 : (1968) CriLJ 1271

Hon'ble Judges : Hardayal Hardy, J

Bench : Single Bench

Advocate : D.R. Sethi, for the Appellant;

Judgement

(1) This Criminal Reference made by Shri O. N. Vohra, Additional Sessions Judge, Delhi, arises out of an application u/s 435 and 438, Criminal Procedure Code, filed by the petitioner Shri K. D. Kohli against the order dated 11-9-1967 made by Shri N. C. Jain, Sub-Divisional Magistrate, Delhi, whereby the preliminary objection raised on behalf of the petitioner to the maintainability of the proceedings u/s 145, Cr. P. C., was dismissed. The learned Additional Sessions Judge has recommended that the proceedings pending before the learned Magistrate u/s 145. Cr. P. C., be quashed.

(2) The facts as reported by the learned Judge are that on 22-12-1965 Shri K. K. Sondhi, Manager, Gwalior Potteries, filed a complaint in the Court of Shri N. L. Kakkar, Sub-Divisional Magistrate, Parliament Street, New Delhi, alleging that the Gwalior Potteries of which he was the Manager, had godowns and stores in the same premises in which the premises of Messrs. Printers' House were located in the building known as Scindia House, New Delhi, and that the door of his premises was at the back and opened at a place where a canteen was being run by the authorities of the Delhi Transport Undertaking and that on the ground-floor there was a room measuring about 7 feet by 17 feet which was separated by a wooden partition from the premises of Messrs. Printers' House. He alleged that there was a Do-chhati and the other big room to which access could be had

from the Do chhatti and that a wooden staircase had been provided for going to the Do-chhatti and the connected room from the room on the ground-floor . He also alleged that on 19-12-1965 he was informed by one Shivraj, an employee of the Madhya Pradesh Emporium, that Shri K. D. Kohli, Shri O. P. Mohan, Shri Braham Datt and Shri Rishi of the Printers" House had illegally and forcibly taken possession of the premises comprising the ground-floor room and Do-chhatti and that the door of the entrance had been bolted from inside.

(3) On this complaint the learned Magistrate who had by then succeeded Shri N. L. Kakkar passed a preliminary order u/s 145 (1), Cr. P. C., on 1-10-1966. The petitioner raised a preliminary objection that the proceedings had become infructuous and that no relief could be given to the complainant inasmuch as the preliminary order had been passed after more than two months of the alleged dispossession of the opposite party. The learned Magistrate, however, opined that the preliminary order could not have been passed earlier because proceedings in the case had been stayed by the learned Sessions Judge, Delhi, on 29-12-1965 and the stay order had remained in force till shortly before the date on which the preliminary order was passed by him. In support of his view the learned Magistrate relied upon a Division Bench judgment of the Madras High Court in Chunchu Narayana and Others Vs. Karrapati Kesappa, .

(4) It appears to me that there is merit in the recommendation made by the learned Additional Sessions Judge which must, Therefore, be accepted. The order made by the Learned Magistrate is erroneous in law and is based on a decision which has been overruled by a Full Bench of the same High Court in Athiappa Gounder and Others Vs. S.A. Athiappa Pandaram, .

(5) The provisions of Section 145, Cr. P. C., in so far as they are relevant for the purpose of this case, have come up for consideration in numerous cases including several Full Benches of the High courts in India and it is a matter of some regret that the learned Magistrate should not have been aware of those cases and should have based his order on the overruled decision of the Madras High Court.

(6) Sub-section (1) of section 145 Cr.P.C. provides that whenever a Magistrate is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by him and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute and also to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims.

(7) Sub-section (4) provides that the Magistrate shall then, without reference to the merits or the claims of any such parties to a right to possess the subject of

dispute, peruse the statements, documents and affidavits, if any, so put in , hear the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of appearance of the parties before him and, if possible, decide the questions whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject.

(8) This provision is followed by three provisions. The proviso which is material for the purposes of this case is the second proviso which lays down that if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date.

(9) Sub-section (6) provides that if the Magistrate decides that one of the parties was or should under the second proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbances of such possession until such eviction and when he proceeds under the second proviso to sub-sec (4), he may restore to possession the party forcibly and wrongfully dispossessed.

(10) A plain reading of the sections makes it clear that an arbitrary period of two months has been fixed by the statute. But for the second proviso to sub-section (4) , the inquiry would be limited to ascertainment of the fact of possession on the date of the preliminary order envisaged in sub-section (1). The intention of the Legislature is that apart from the person who was actually in possession on the date of the preliminary order, the person who has been wrongfully dispossessed within two months from the date of the said order can also be restored to possession.

(11) As is well known the provisions of this section are primarily designed for maintenance and preservation of peace. The powers vested in the Magistrate under this section are meant to be utilised even to protect the possession of squatters. The section is concerned not with right to possession but with actual physical possession of the property in dispute. It is Therefore, of the essence of this section that the Magistrate in matters affecting breach, of the peace must exercise his powers with diligence and promptitude in passing a preliminary order. Likewise, the police have equally an important duty to submit their report when called for without delay or procrastination.

(12) In this view of the matter there is hardly any scope for invoking any considerations of equity of hardship. The Bench decision of Govinda Menon and Basheer Ahmed Sayeed JJ., in *Chunchu Narayana and Others Vs. Karrapati Kesappa*, , which had been relied upon by the learned Magistrate and which, as stated above, has been over ruled, had applied the maxim *actus curiae Eminent gravabit* (the Act of the Court shall prejudice no man) and the fiction of *nunc pro tunc* for then). The legislative intent as manifested by the clear and unambiguous language used in the section cannot be allowed to yield to any such

considerations.

(13) If by the order of stay granted by the Court of Sessions, the learned Magistrate was prevented from passing a preliminary order and the petitioner continued to remain in possession for a period of over seven months after the date of the alleged forcible and illegal dispossession of the respondent is likely to suffer as a result of the Act of the Court cannot be remedied by the learned Magistrate assuming jurisdiction to pass such an order long after the expiry of the statutory period of two months fixed by the second proviso in sub-section(4) of Section 145, Cr.P.C. It is a cardinal rule of construction that when the language of the statute is clear, unambiguous and in express terms, then all that is required is to expand those words in their natural and ordinary sense unless in doing so some absurdity or some repugnance or inconsistency with rest of repugnance or inconsistency with rest of the provisions of the statute would result, in which case it will be permissible to modify the construction for avoiding that absurdity, but their the power of the Court to modify the express terms of the statute ends.

(14) Since the final order which the Magistrate is empowered to pass under sub-section (6) is to declare as to which of the parties was in possession or could be treated under the second proviso to sub-section (4) as being in possession of the property forming the subject-matter of dispute and the condition precedent to his making that order is the passing of a preliminary order under sub-section(1) of Section 145 Cr.P.C.(and in the instant case the respondent was neither in possession of the property on 11.9.1967 nor had he been dispossessed within two months before the date of that order, his allegations being that he had been dispossessed as far back as 22-12-1960), the learned Magistrate would have obviously no jurisdiction to make such an order. In the result the proceedings u/s 145, Cr.P.C., initiated by the respondent had become instructions and the preliminary objection raised by the petitioner to the maintainability of those proceedings had thus become irresistible.

(15) the precise point which arises in this case was decided by a full Bench of allahabad High Court in Ganga Bux Singh Vs. Sukhdin, , wherein it was held:

"Where a dispossessed person seeks relief under the provisions of s. 145, Cr.P.C., and the Magistrate passes a preliminary order u/s 145(1), Cr.P.C. more than two months after such dispossession but by his final order u/s 145 (6) he puts him in possession, the final order cannot be deemed to be a valid order on the ground that the Court itself was responsible for this delay and so a partly cannot be penalized for the fault committed by the Court. ` In such a case the Magistrate is not justified in treating or empowered to treat the partly who had been dispossessed more than tow months before the actual date of his preliminary order u/s 145 (1), Code of Criminal Procedure, as being in possession on the date of his order under proviso (1) to sub-sec, (4) of Section 145 of the Code of Criminal Procedure." (16) the learned Judges expressly dissented from the view of the Madras High Court in the case of Chunchu Narayana and Others Vs.

Karrapati Kesappa, and held that the doctrines of "nue pro tunc" and "act us curiae neminem, gravabit" cannot be applied to an order passed by a Magistrate u/s 145 (4), Cr.P.C.

(17) To the same effect is a Division Bench decision of the High Court of Andhra Pradesh in Padmaraju Subba Raju and Others Vs. Padmaraju Koneti Raju and Another, , which was later approved by a Full Bench of that Court in Kamapati Venkat Ramiah Vs. Challapalli Sitharamiah, . It may be mention here that in the High Court of Andhra Pradesh the reference of the question to a full Bench of that Court was necessitated by the conflict between the earlier decision of the Madras High Court in Chunchu Narayana and Others Vs. Karrapati Kesappa, and the latter bench decisions of the Madras Andhra 87, that the decisions of the Madras High Court rendered prior to 5-7-1964 were binding on the High Court of Andhra and that in a case where a Division Bench of Andhra High Court was inclined to take a view different from that of the Division Bench of the Madras High Court of equal strength, the case should be referred to a full Bench.

(18) The view that I have taken is also in accord with the view taken by Om Prakash J., of this Court in sohan Lal v. State, Cr. Revn. 354-C of 1966, D/-12-9-1967 (Delhi). The case has not been reported so far but an extract from the judgment appears in 1967 Delhi High Court notes (Part Xiii, Case No. 200), Although this case was decided as far back as September 12,1967, it has not been noticed by the learned Additional Sessions Judge in the reference made by him on 28-12-1967. It appears that neither the learned Additional Sessions Judge himself nor the counsel appearing before him were aware of this decision. Learned Judge has of course referred to a decision of Tex Chand J. Of the Punjab High Court, Sri Ram and Others Vs. The State and Others, , But that judgment is relevant only to the extent that it expounds the meaning of the second proviso to sub-section (4) of Section 145, Cr.P.C.

(19) There are several other judgments of other High Courts in which the same view has been taken. It is, however, not necessary to refer to those as the meaning of the section appears to me too plain.

(20) The reference is, Therefore, accepted and the proceedings u/s 145, Cr.P.C., pending in the Court of the learned Magistrate are ordered to be quashed.

(21) Reference Accepted.