

(1953) 11 AP CK 0006
In the Andhra Pradesh High Court

Konduri Mankayya Lingam

APPELLANT

Vs

Konduri Ram Lingam

RESPONDENT

Date of Decision : 11-11-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1954) CriLJ 656

Hon'ble Judges : Srinivasachari, J

Bench : Single Bench

Judgement

Srinivasachari, J.—These proceedings have arisen out of an application filed by Konduri Rama Lingam, respondent before me, before the Munsiff Magistrate, Huzurabad, u/s 145, Criminal P. C. The applicant alleged that himself and the second party, Konduri Mankayya Lingam were brothers running a factory by name Konduri yenkata Rajam and Brothers Rice Ginning and Oil Mills at Jammikunta under a registered partnership of which the petitioner and the respondent were the partners. He further alleged that, disputes having arisen, a notice of dissolution of the partnership was given by Konduri Mankayya Lingam and after that date the factory remained closed. He averred that the accounts of the partnership had to be settled and the assets and liabilities gone into. The applicant before the Magistrate alleged that he was in possession of the factory, the machinery etc. and that the other partner was out of possession.

He made a statement that a portion of the factory had been requisitioned by the Collector of the place for the purposes of a godown and that when the main gate of the factory which had been ordered to be closed by the Collector was opened the other party gathered an unruly mob of hundred persons and attempted to break open the locks of other rooms in the factory by force and tried to remove valuable machinery out of the factory. The further allegation made in his petition was that on 10-7-1953, the same party, viz., Konduri Mankayya Lingam entered the compound with an armed gang of about 100 persons with lathis and tried to break open the locks and forcibly dispossessed the applicant.

On all these allegations he submitted that there was a likelihood of a breach of peace & he, therefore, prayed that steps be taken for averting the breach of peace. Along with this application, the applicant filed another petition praying that interim orders be issued to attach the properties in dispute & give them over into the charge of a Receiver appointed by the Court, pending disposal of the application u/s 145, Cri. P. C. It may be mentioned here that a report was received from the police that there was an apprehension of breach of peace on account of a dispute between the brothers about the factory. The Magistrate recorded the statement of the Sub-Inspector of Police of the place wherein he stated that on 10-7-1953, at about 5 O'clock when the first party was getting the factory cleaned, the second party wanted to get in.

He stated that along with the both parties there were goondas. The first party was trying to prevent the second party from entering and the second party was trying to force his way into the factory. He stated that there was grave apprehension of breaking the heads and consequent breach of peace. The Magistrate, therefore, held that he was satisfied that there was apprehension of breach of peace and the matter had become so very critical that for the purposes of interim peace and order the factory should be taken over under the supervision of the Court. He, therefore, directed that the concerned police do take over the property under their possession. It is against this order of the Magistrate that the present revision petition has been filed by the second party viz. Konduri Mankayya Lingam (Konduri Manikya Lingam).

2. Shri Rangachar, learned Advocate for the revision petitioner contended that the Magistrate had no Jurisdiction to pass an order of the kind now under revision. He urged that admittedly the first party and the second party were partners having equal rights in the factory and the possession of the other party was only for and on behalf of the petitioner. The partnership property being joint the possession of one of the parties should be deemed to be only on behalf of the other partner as his agent. He also contended that the provisions of Section 145 were being abused in this case. The remedy of the party who was aggrieved by the fact that another partner was in possession of the property was to have moved a Civil Court for appointment of a Receiver by filing a suit for the taking of the accounts of the dissolved partnership. This step, he contended, was not warranted in law. It was also urged by the learned advocate that in a case like this no question of eviction between the parties could arise because it was a partnership concern. On these grounds he argued that the order of the Magistrate was liable to be set aside.

3. Before dealing with the arguments of the respective advocates in this case I might refer to the scope of Section 145, Criminal P. C. The Object of Section 145 is to bring to an end, by a summary process, disputes relating to lands etc., which are, in their nature, likely, if not suppressed, to end in breaches of peace. The maintenance of public peace, law and order, was the main object before the mind of the Legislature and, therefore, that being the supreme object in view,

the convenience and even the rights of individuals must for the time being be sacrificed for its attainment. It may be that for the time being the person who is in possession is deprived of his possession of what he considers to be rightfully his. But considerations like these ought to be subordinated to the imperative necessity of preserving peace.

It is abundantly clear from the police report, the affidavit filed by the respondent before the Magistrate and the sworn statement of the Sub-Inspector of Police before the Magistrate, that if the parties were allowed to agitate about their rights in a Civil Court and no immediate step was taken there was sure possibility of bloodshed, having regard to the fact that there were arrayed on both sides a multitude of goondas. The question now arises as to whether in a case like this where both the parties are joint proprietors of the factory, they being partners with equal rights, the Magistrate had no jurisdiction to pass an interim order pending disposal of the application before him for the preservation of the property and for avoiding breach of peace. The first case relied upon by the learned advocate for the petitioner is a case reported in - *Makhan Lal v. Barada Kanta Roy* 11 Cal W N 512 (A). No doubt in this case there does appear to be an observation that where it is a case of joint property Section 145, Criminal P. C. could not be invoked.

But it has to be observed that this case has been dissented from, explained and distinguished in other decisions of the same High Court. For example, in - *Gurudas Kundu v. Kedar Nath* 38 Cal 889 (B), it has been clearly laid down that a dispute between the sides of joint owners each claiming exclusive possession of the property came within the scope of Section 145, Criminal P. C. The learned Judges distinguished the case reported in - "11 Cal W N 512 (A)". Again in the case of - *Basanta Kumari Dasi v. Maheschandra Laha* 40 Cal 982 (C), the learned Judges held that the Magistrate has positively jurisdiction u/s 145, Criminal P. C. in the case of Ijmal land where each party claims to be in exclusive possession of specific portions of the same. Here also they distinguished the case of - "11 Cal W N 512 (A)". It would, therefore, be clear that the mere fact that there is joint title to a piece of land would not take away the application of Section 145.

4. It was sought to be argued that in this case there was no question of exclusive possession by any one of the parties because the first party in the lower Court and the respondent now before me must be deemed to have been in possession on behalf of the partnership and in support of this the learned advocate relied upon a decision of the Calcutta High Court reported in - *Kinu Mondal v. Haji Baul Mondal* 23 Cal W N 1051 (D) and another decision of the same High court in - *Radha Raman v. Baliram Ram* 32 Cal 249 (E). The first was a case where the learned Judges held that the possession of a manager of a joint family should be protected as he was holding possession on behalf of the joint family. This, in my opinion, cannot help the case of the petitioner because in a partnership one partner does not act as the agent of another partner and in a case like this where the partnership has been dissolved the person who was in possession could not

be regarded as the agent of the other.

It may be said that a partner does act for the firm and is an agent for the firm but he cannot be regarded as an agent of the other partner and the law that would be applicable to him in such cases is the law of partnership and not the law of agency. This view is supported by a decision of the Nagpur High Court in the case of - AIR 1933 127 (Nagpur) . In order to preserve peace the Magistrate can take steps u/s 145, Criminal P. C. and thus maintain status quo even though the actual physical possession was that of an agent. In this view I am supported by the decision of the Madras High Court in the case of - Gopal Iyer v. Krishnaswamy Iyer AIR 1920 Mad 209. It is not essential for invoking Section 145, Criminal P. C. that the dispute between the two parties must be between parties having adverse rights. It can also be invoked if the dispute is as between the parties having joint rights.

The decision relied upon by the learned advocate for the petitioner in - Ma" Ma Gyi v. Emperor AIR 1924 Rang 178 does not take the case of the petitioner any further. In that case a note of warning has been sounded against the provisions of Section 145 being abused. The Judges of the Rangoon High Court merely stated that it is not open to a party to circumvent taking steps in a Civil Court and adopt the forum of the Criminal Court for proceedings u/s 145. There can be no hard and fast rule in this regard. If there is a likelihood of breach of peace and breaking of heads a party cannot be asked to move the Civil Court and obtain a proper order for the preservation of the property. What has to be done is the stopping of the breaking of heads before ever the property could be preserved.

I am, therefore, of opinion that the only essential for the application of Section 145 is that the Magistrate should be satisfied that a dispute concerning land or water, which is likely to cause breach of peace, exists. I further hold that the exercise of the power u/s 145, Criminal P. C. is only subject to the limitations mentioned in the section. There is no warrant for the grafting of any further limitations which have not been placed there by the Legislature. Further the Magistrate is concerned entirely with actual possession, whether such possession is lawful or unlawful, whether in the eye of the law this possession by the party would be regarded as being in his own right or on behalf of the others. It is not the business of the Magistrate to ascertain whether the possession is founded on title or not. His only concern is to see who is in de facto possession of the subject of the dispute.

5. My opinion is that this petition which has been filed even before the filing of the statements of the parties by the other side cannot be sustained. The revision petition is, therefore, dismissed.