
(1925) 11 AHC CK 0041
In the Allahabad High Court

Lallan Misir and Others

APPELLANT

Vs

Ram Rachchha

RESPONDENT

Date of Decision : 17-11-1925

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1926 All 242 : (1926) ILR (All) 258

Hon'ble Judges : Daniels, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Daniels, J.—This is a reference by the learned Additional Sessions Judge of Gorakhpur on the ground that an order passed by the Magistrate, Ch. Mohibullah, directing certain crops to be made over to the opposite party Ram Rachchha Koeri was passed without jurisdiction and should be set aside. There was originally a proceeding u/s 145 of the Criminal Procedure Code in respect of these crops and the plots on which they grew between Lallan Misir on the one side and Kanta Kunwar and Jarnna Kunwar on the other. That proceeding was commenced before Ch. Mohibullah, but he was transferred while it was pending and the final order was passed by another Magistrate. This order was to the effect that the Magistrate was unable to determine who was in possession of the plots, and he, therefore, attached the crops u/s 146 of the Criminal Procedure Code. The crop had in the meanwhile been cut and stored by the police to prevent its perishing. Ram Ramchchha had applied to be made a party during the pendency of these proceedings but his application was rejected. After the case u/s 145 was decided he made a complaint in respect of these crops before Ch. Mohibullah, who had by this time returned, u/s 427 of the Indian Penal Code. This complaint was dismissed. A previous application claiming the crops and asking the Court to pass any proper order was also dismissed by Ch. Mohibullah on 26th February 1925. Two months later, on 28th April, Ram Rachchha returned to the charge and put in a fresh application asking for the attached crops to be made over to him. On this the Magistrate sent for the record of the case u/s 145

and after examining the patwari, but without giving any notice to the parties to the Section 145 case, who are the present applicants, passed an order directing the, crops to be made over to Ram Rachchha. This order was clearly made without jurisdiction. The order passed u/s 145 was a final order and it was not open either to the Magistrate who passed it or to his successor to review it, or to set it aside in any way. Ram Rachchha's remedy, if he claimed the crops, was to go to the civil Court. The Magistrate has not made matters better by the long explanation which he has submitted. The greater part of this explanation is quite irrelevant to the point he was asked to explain and deals with his action in taking proceedings u/s 476 of the Code of Criminal Procedure. The orders passed under that section have been set aside by the Sessions Judge in the exercise of his appellate powers and no explanation was called for from the Magistrate in regard to them. As regards the order now complained of, the explanation comes to no more than this: that the Magistrate considered that Ram Rachchha was in the right and was determined to pass some order which should give him his rights. The Magistrate has allowed his feelings to run away with him and in a mistaken effort to do justice has passed an order which is flagrantly illegal I accept the reference and set aside the order directing the crops to be made over to Ram Rachchha. This order will govern both references.