
(1962) 07 KAR CK 0004
In the Karnataka High Court

Laxmana Subrao Patil and Others

APPELLANT

Vs

Bhagubai Patil

RESPONDENT

Date of Decision : 13-07-1962

Acts Referred:

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

Citation : (1963) CriLJ 697

Hon'ble Judges : Mir Iqbal Husain, J

Bench : Single Bench

Judgement

Mir Iqbal Husain, J.—Petitioners before this Court are the II party, in proceedings u/s 145 Cr.P.C. before the Sub-Divisional Magistrate, Belgaum Sub Division, Beigairm. They are the four sons of one Subrao. The eldest brother - Mareppa who is dead has a son by name Subrao. Subrao's widow is Bhagubai who was Party No. I before the said Magistrate. On the ground that there was an imminent breach of the peace, certain properties were attached and a preliminary order was passed by the Taluka Magistrate, Hukeri on 5-5-1959. Before the said Magistrate, Party No. II, the present petitioners, filed their statement in which they alleged that there was no likelihood of the breach of the peace and hence the proceedings should be dropped. Moreover, they alleged that there was a Civil case pending between the parties and on that account it was necessary that the proceedings u/s 145 Cr.P.C. should be stayed.

Though the learned Magistrate did not accede to the first request of the II party for dropping the proceedings, he however, acceded to the second request viz. to stay the proceedings till the pendency of the Civil Suit. Later, these proceedings were transferred to the Court of the Sub-Divisional Magistrate, Belgaum. It is this latter Magistrate who has passed an order dropping the proceedings. He has further ordered that the attachment of the properties be vacated and the possession of the lands so attached be handed over to Party No. I Bhagubai widow of Subrao, son of Mareppa. He also ordered that the income from the lands which was in the hands of the Receiver also be handed over to the Party

No. 1.

2. Aggrieved by that order, Party No. II approached the District Magistrate, Belgaum in revision who upheld the order of the Sub-Divisional Magistrate.

3. It is strenuously urged by Sri Hiremath, the learned Advocate for Party II, the present petitioners that the orders passed by the Sub-Divisional Magistrate as well as the District Magistrate are vitiated because the Sub-Divisional Magistrate had no power to drop the proceedings and to hand over the possession of the properties to Party No. 1. " The Sub-Divisional Magistrate, it is submitted, has ignored the provisions of Section 146 (1) Cr.P.C. in not coming to a conclusion as to which party was in possession of the properties nor has he referred the case for a finding on that point to a Civil Court. The Sub-Divisional Magistrate has passed an order dropping the proceedings because of the decision of a Civil Court in Civil Suit No. 26/58 on the file of the Civil Judge, J.D. Hukeri.

4. The point for consideration, therefore is whether the Sub-Divisional Magistrate was right in dropping the proceedings and passing the consequential order. In this connection, it is necessary to briefly refer to the Civil Suit referred to above between the parties. Bhagubai Party No. 1 filed a suit for a declaration that a deed of gift said to have been executed by Mareppa, her father-in-law in favour of defendants viz., the four members of Party No. II is a fraudulent document; that it is not binding on her and hence she prayed for its cancellation. She contended that she was the sole heir to these properties after the death of Mareppa; that the four members, Party No. II, who were defendants in that suit were the divided brothers of Mareppa.

The learned Civil Judge while deciding that case gave a finding that she was in possession of the lands as evidenced by the extracts of the Record of Rights filed in the case. These are the very lands in respect of which proceedings u/s 145 Cr.P.C. have been taken. The learned Civil Judge decreed that suit. It is submitted that there was an appeal by members of Party II which was dismissed. Hence the decision of the civil suit binds the parties. This decree in the suit was passed on 28-8-1959. Thereafter, after issuing notices to both the parties and hearing them, the learned Sub-Divisional Magistrate passed an order which is now in question.

5. The Party No. II, themselves submitted to the Magistrate that there was no likelihood of the breach of the peace which fact is further confirmed by passing of the decree in the civil suit between the parties, the Sub-Divisional Magistrate was right in dropping the proceedings.

But Shri Hiremath contends that the Magistrate has no right to hand over possession of the properties to party No. 1 and has no right to drop the proceedings. There is no substance in this contention. It is incumbent on the Magistrate to make incidental orders. Otherwise, it would lead to an anomalous position. When the Magistrate has the guidance of the Civil Court as to who is the person entitled to the properties, he has passed an order releasing the

properties in favour of that successful party. In the case of *Imambu v. Hussenbi* reported in AIR 1960 Mys 203 it is held:

A Magistrate acting u/s 145 ought to respect any recent decision given by a competent Civil Court on the question of possession. But it is a question of judicial propriety. As a corollary to this rule, if a Civil Court decides the question of possession even for the purpose of giving an interim relief, the Magistrate acting u/s 145 should respect that decision as well.

Even in case interim relief is granted by the Civil Court, the Magistrate is bound to respect it. Much more so should he respect when a decision is given on the merits of the case as to the respective contentions of the parties which clearly indicates which party that was in possession of the properties and entitled thereto.

6. Shri Joshi, the learned Counsel for the respondent party No. 1. contends that it is incumbent on the Magistrate to hand over the possession of the properties to the party who is entitled to and who, in his opinion was the party in possession. Otherwise there would be a scramble for the properties leading to a breach of the peace. In support of his contention he relies on a few authorities a brief reference to which follows. In the case of *Ali Bahadur v. Emperor* reported in 26 Cri LJ 1629 : AIR 1926 Oudh 143 it is laid down:

Where property attached u/s 146 Cr.P.C. is released by the Magistrate on being satisfied that there is no longer any likelihood of a breach of the peace, it is open to the Magistrate to make over possession of the property to any party he thinks fit. He is not bound simply to direct the Receiver to abandon the property, leaving the parties to scramble for the estate. There may, however, be cases in which it might be sufficient for him to make an order withdrawing the attachment, and leave some party to take possession.

In the present case rightly the Sub-Divisional Magistrate has passed an order directing Party No. 1 to be in possession of the properties. Similar is the decision of the Rajasthan High Court in the case of *Ram Lal Vs. Mangu*, where it is held that:

It is open to the Magistrate while dropping the proceedings and removing the attachment in such cases to make an incidental order to restore possession to the party or parties from whom it had been taken at the time of attachment, and the Magistrate cannot possibly be said to be *functus officio* when he passes any such orders.

Similar is the view held in the case of *Gopal Krishna Goswami Vs. Bissey and Others*, where it is held:

All that is laid down u/s 148 is that the Magistrate may keep the property under attachment until a competent court has determined the rights of the parties thereto or the person entitled to possession thereof. What he should do after a competent court has determined the rights of the person entitled to possession is

not stated in Section 146 and it is left to assumption that he should release the property in favour of the party who has been held to have the right, to the property or to be entitled to its possession. The Magistrate is no more functus officio after releasing the property in favour of the party successful in the original competent court than he was when he passed the order u/s 146.

Lastly the Madras High Court in the case of Havildar Venkatachallam Vs. Sappar Palayam and Another, has held:

That it is the duty of the Magistrate to support the decisions of the Civil Courts and see, as far as possible, that the decrees of the Civil Courts are maintained by declaring the petitioner to be in possession of the property. Otherwise it would only amount to putting a premium upon the highhanded and unlawful activities of the other side.

These decisions, in my view, are very apposite. Following the said decisions, I come to the conclusion that the order passed by the Sub-Divisional Magistrate, Belgaum, confirmed by the District Magistrate, Belgaum, are to be upheld.

7. In the result, this petition fails and is dismissed.