

(1968) 05 GAU CK 0004
In the Gauhati High Court

Longjam Thambalangou Singh and Others	APPELLANT
Vs	
Huidrom Tollamu Singh and Others	RESPONDENT

Date of Decision : 17-05-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144(2), 145, 435

Citation : AIR 1969 Guw 27 : (1969) CriLJ 419

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is a revision petition filed u/s 435, Cr.P.C. to set aside the order of the Sessions Judge, Manipur dated 1.12.1967 in Criminal Misc. Case No. 480/67 dismissing the same, filed to set aside the order of the S.D.M., I.W. dated 8.11.1967 in Criminal Misc. Case No. 43 of 1967 filed u/s 145, Cr.P.C.

2. The brief facts of the case are thus,: The Tronglaobi sub-fishery of Leitangpat Fishery No. 128 was de-reserved in 1960. The Chief Commissioner, Manipur, ordered on 1.7.1960 that the said fishery should be settled in favour of a Farming Co-Operative Society, formed by the landless people of a contiguous village, without prejudice to the interest of the Government in the Grassmahal. On the assurance given by the Settlement Department, the petitioners formed a Farming Co-operative Society in 1965-66. Even, prior to the year of de-reservation, the members of the Society including the petitioners reclaimed the lands and the petitioners were thus in physical possession and enjoyment of the lands for about 10 years.

3. Sometime in the month of October, 1966, the respondents who are the villagers of Thiyam Leisangkhong applied for settlement in the name of a proposed Co-operative Society as "Thiyam Leisangkhong Cooperative Society" (not yet registered). The Settlement Department granted some lands to individuals on 25.10.1966. The petitioners filed C. C. Revenue Appeal Case No. 2

of 1967 before the Chief Commissioner. After hearing the parties, the Chief Commissioner cancelled the settlement and remanded the case to the Settlement Officer for re-consideration and issued direction that the de-reserved area should not be granted in such a way that the order of settlement should flout the intention of the Government, so far as the purpose of de-reservation is concerned.

4. The respondents filed Writ Petition No. 10 of 1967 in this Court to set aside the order of the Chief Commissioner and obtained stay of the operation of his order. The respondents filed an application before the S.D. M., I.W., (Cril. Misc. Case No. 40 of 1967) u/s 144(2), Cr.P.C. for an order against the petitioners. The Section D.M., I.W. passed an ex parte order on 5.10.1967 u/s 144 (2), Cr.P.C. The order was to remain in force upto 5.12.1967. On account of the said order, the petitioners were ousted from the possession of the disputed 30 paris of "Lou". Being aggrieved by the order, the petitioners filed a petition Cril. Misc. Case No. 4 of 1967 u/s 144 (4) and (5) Cr.P.C. before the District Magistrate on 13.10.1967. The latter passed a stay order on 17.10.1967. By virtue of the stay order the petitioners' party resumed possession of the disputed 30 paris of "lou". The stay order was operative till the final decision of Criminal Misc. Case No. 4 of 1967. The District Magistrate, however, erroneously added that the Mayang-Imphal Police could report to the S.D.M., I.W. u/s 144 (2), Cr.P.C. if there was need for prevention of any breach of the peace.

5. The Mayang-Imphal Police filed a report dated 29-10-1967 before the S.D.M., I.W. to draw up proceedings u/s 145, Cr.P.C. against both the parties. On a petition filed by the petitioner, the S.D.M., I.W. passed an order on 7.11.1967 that no proceeding would be launched in respect or the disputed lands before the pronouncement of the order by the District Magistrate on 20.11.1967 (so that his order might not flout the purpose of the stay order passed by the District Magistrate). But, again the S.D.M., I.W. passed an order on 8.11.1967 (cancelling his previous order dated 7.11.1967) u/s 145(1), Cr.P.C.

6. The petitioners moved the Sessions Judge in Criminal Misc. Case No. 480 of 1967 to set aside the order of the S.D.M., I.W. dated 8.11.1967. The learned Sessions Judge dismissed the petition on 1.12.1967. Hence, the present revision petition.

7. The learned Counsel for the petitioners raised two grounds for interference by this Court in the present revision petition. Firstly, he urged that as the petitioners obtained possession of the disputed land (rightly or wrongly) after 17.10.1967 by virtue of the stay order passed by the District Magistrate, pending disposal of the Criminal Misc. Case No. 4 of 1967, the S.D.M., I.W. should have protected their possession and that he should have taken action against the respondent u/s 107, Cr.P.C. He relied on Yumnam Sajou Singh and Others Vs. Chanambam Thambalangou Singh and Another, and Khundrakpam Thambalangou Singh Vs. Laisram Beda Singh, wherein this Court pointed out the distinction between the proceedings u/s 145, Cr.P.C. and those u/s 107, Cr.P.C. The Magistrate will have

to distinguish between a case where one party is clearly in possession of the land and another party, who is not in possession of the land attempts to interfere with the possession of the other party and thereby attempts to create a breach of the peace and a case where a bona fide dispute regarding the land exists, which is likely to create a breach of the peace. In the former case, the course of the Magistrate is to take action against the other party u/s 107, Cr.P.C. and to bind him over to keep the peace. But, in the latter case the Magistrate will have to start proceedings u/s 145, Cr.P.C. It was also pointed out that the Magistrate must apply his mind judicially in such matters. In the present case, the report of the Police dated 29.10.1967, on which reliance was placed by the learned Counsel for the petitioners to show that the petitioners were in possession of the land, does not, in fact, support his contention. The report reads that it was difficult to find out which party was in actual physical possession of the land and that the petitioners entered forcibly into the disputed land after the District Magistrate passed the stay order on 17.10.1967. Section 145(4), proviso (2) clearly lays down that, if it appears to the Magistrate that any party has within two months next before the date of the preliminary order been forcibly and wrongly dispossessed, he may treat the party so dispossessed as if he had been in possession at such date. As such, the fact that the petitioners obtained forcible possession of the land in dispute after 17.10.1967 during the pendency of the stay order passed by the District Magistrate does not avail the petitioners. The Magistrate is not bound by the report of the Police. He has to make his own judicial enquiry. Vide in this connection, note 13 at page 946 of Sohoni's Code of Criminal Procedure Vol. I 1965 edition and also Harbir Singh v. State AIR 1952 Pepsu 29. So, the S.D.M., I.W. was correct in starting proceedings u/s 145, Cr.P.C.

8. The second contention of the learned Counsel for the petitioners is that the District Magistrate erred in giving a direction in his stay order that the Mayang-Imphal Police could report to the S.D.M., I.W. u/s 144(2), Cr.P.C., if there was need for prevention of any breach of the peace, that it amounted to a direction u/s 145, Cr.P.C. to the Magistrate through the Police to take action, but that he had no authority to do so. He relied on the commentary at pages 200 and 201 of Sarkar's Law of Criminal Procedure Second Edition, wherein the learned Commentator states that the District Magistrate has no authority to direct a Magistrate to institute proceedings u/s 145, Cr.P.C. But, in this case the District Magistrate did not direct the S.D.M., I.W. to take action u/s 145, Cr.P.C. But, he suggested to the Mayang-Imphal Police to report to the S.D.M., I.W. u/s 144(2), Cr.P.C. if there was any need for prevention of the breach of the peace. So, the officer-in-charge of the Mayang-Imphal Police was entitled to move the S.D.M., I.W. u/s 145, Cr.P.C., as he did, by filing his report on 29.10.67.

9. The respondents' counsel brought to my notice a number of receipts, documents etc. to show that the respondents were in possession of the disputed land, while the petitioners' counsel stated that the petitioners also had a number of documents to prove their possession but that they did not file them as yet before the S.D.M. and that the petitioners, who are residents of a contiguous

village are entitled to settlement. As the matter is now pending not only before the Settlement Officer but also in this Court in Writ Petition No. 10 of 1967, I refrain from making any observation on the merits of the case.

10. In the result, the petition fails and it is accordingly dismissed.