
(1987) 11 AHC CK 0022
In the Allahabad High Court
Case No : Criminal Revision No. 906 of 1983

Madan Mohan Raturi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 23-11-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(5), 146(1)

Citation : (1988) 12 ACR 66

Hon'ble Judges : V.P. Mathur, J

Bench : Single Bench

Judgement

V.P. Mathur, J.—Proceedings u/s 145 of the Code of Criminal Procedure were started at the instance of Tarun Kumar and Tulsi. They were numbered as Criminal Case No. 20 of 1982. They pertained to police station Kotwali, District Dehradun and the cognizance was taken by the City Magistrate of Dehradun. A preliminary order was passed on 29-7-1982 and thereafter the learned Magistrate passed an order of attachment u/s 146(1) Code of Criminal Procedure in Cr. case No. 20 of 1982. I presume that this order of attachment was passed because the learned Magistrate was of the view that it was a case of emergency and attachment was necessary and thereafter the parties adduced evidence and the case was ripe for decision. Meanwhile on 17-8-83 on behalf of Madan Mohan Raturi, an application was moved alleging that there was no existing dispute now on the spot and hence no cause for apprehension of breach of peace and therefore the proceedings may be dropped. This was an application u/s 145(5) of the Code of Criminal Procedure. The learned City Magistrate Dehradun disposed of this petition by an order of the same date (17-5-1983) a copy of which has also been placed on the record. His assumption is that prima facie there is nothing in the petition to prove the allegation that there was no dispute existing and no likelihood of breach of peace. With this observation he dismissed the petition.

2. Section 145(5) clearly lays down that any party to the proceedings or even an

outsider, provided he has interest in the subject matter of dispute, is free to show at any stage of the proceedings that no dispute exists or has existed and if he is able to convince the Magistrate about it, the only course open for the Magistrate will be to cancel his order (Preliminary order) and to stay all further proceedings.

3. In the case of Gajpat Rao and Another Vs. Smt. Ladli Kunwar and Others, : Gajpat Rao and Another Vs. Smt. Ladli Kunwar and Others, a similar case was considered by this Court and it was held that the question of existence of dispute and apprehension of breach of peace was a fundamental question which would effect the very jurisdiction of the Magistrate to proceed further in the matter. If there is no dispute or if no dispute had existed and there is absence of any apprehension of breach of peace then the Court will have no jurisdiction to proceed u/s 145, Code of Criminal Procedure itself.

4. The procedure adopted by the learned Magistrate in this case has been completely defective and illegal. What should have been done could be to direct the other side to file his objection, if any, against this petition and then either to make an enquiry from the police or take evidence and decide any point raised by this petition. If he could come to the conclusion that the point raised by the petition was baseless and there was still existence of dispute and hence of breach of peace, he could proceed further with the matter. But if he came to the conclusion to the contrary, he had no option left but to stay the proceedings and cancel his preliminary order. Under these circumstances, the order passed by the learned Magistrate on 17-5-1983 is no order and has to be quashed.

5. The result is that the revision is allowed. The learned Magistrate's order dated 17-5-1983 is quashed. The case is directed to go back to the learned Magistrate for redetermination of the application purporting to be u/s 145(5), Code of Criminal Procedure in accordance with law. Let this order be transmitted to the Court concerned without delay so that proceedings u/s 145, Code of Criminal Procedure which have been stayed by this Court may go on and are concluded in the light of the observations made above.