
(1980) 11 AHC CK 0014
In the Allahabad High Court
Case No : Criminal Revision No. 1425 of 1980

Mahabir and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146, 386, 389

Citation : (1981) AWC 38

Hon'ble Judges : S.J. Hyder, J

Bench : Single Bench

Advocate : H. Zaidi, for the Appellant;

Final Decision : Allowed

Judgement

S.J. Hyder, J.—This revision arises out of proceedings u/s 145 Code of Criminal Procedure. On an application made by Smt. Kanti Devi, the Magistrate passed a preliminary order u/s 145(1) of the Code of Criminal Procedure on 7-4-1977. The applicants before this Court filed a statement of claim in response to the notice issued to them. Thereafter the parties produced such evidence as they considered necessary to prove their respective possession. The Magistrate was unable to satisfy himself as to which of the parties was in possession on the date of the preliminary order. He accordingly passed an order on March 11, 1980, "attaching the property until a competent Court had decided the rights of the parties thereto. Both the parties felt themselves aggrieved by the said order and two separate revisions were preferred before the Sessions Judge. The two revisions were disposed of by the Third Additional Sessions Judge, Saharanpur by his judgment and order dated August 27, 1980. The revision preferred by the applicants was dismissed and that preferred by Smt. Kanti Devi, Opposite Party No. 2 was allowed. The Sessions Judge, by his order impugned in this revision, held that Smt. Kanti Devi was in possession of the disputed property on the date of the preliminary order and two months before the said date.

2. learned Counsel appearing for the applicant has contended that the

jurisdiction to decide the question of possession is vested in the Magistrate u/s 145 Code of Criminal Procedure and that the revisional Court could not go into that question and hold one or the other party to be in possession over the attached property when the Magistrate was unable to form any such opinion in the order passed by him. The jurisdiction of the Sessions Judge, acting as a Court of revision and the powers which can be exercised by him in such proceedings are to be found within the four corners of Sections 397 and 399 of the Code of Criminal Procedure.

3. Section 397, inter alia, provides that a Sessions Judge may call and examine a record of any proceeding before any inferior criminal Court situate within his local jurisdiction for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order recorded or passed and also as to the regularity of the proceedings before such inferior Court. Under Sub-section (1) of section 399, the Sessions Judge has been conferred with the powers which may be exercised by the High Court under Sub-section (1) of section 401. Subsection (1) of section 401 makes it permissible for the High Court to exercise any of the powers conferred on a Court of appeal under Sections 386, 389, 390 and 391 Code of Criminal Procedure. Sections 389, 390 and 391 do not come into play in a revision against an order passed by a Magistrate under Sections 145 and 146. Clause (d) of section 386 lays down that an appellate Court may reverse, alter or modify an order passed by an inferior Court. It is the power mentioned in Clause (d) of Section 386 which are only relevant for the purpose of this revision.

4. A reference to Sections 145 and 146 of the Code of Criminal Procedure makes it clear that it is the satisfaction of the Magistrate which counts under the said Sections. A revisional Court may no doubt correct any error in the order passed by the Magistrate. He cannot, however, re-assess the evidence and on such re-assessment arrive at a finding which is at variance with the finding recorded by the Magistrate. In the instant case, the Magistrate was unable to decide the question of possession. In case the Sessions Judge was of the view that the said order was vitiated on account of any illegality or impropriety, he had ample jurisdiction to set aside that order and to direct the Magistrate to decide the question of possession afresh. The Sessions Judge could not, however, make his own assessment of evidence on record and come to conclusion that opposite party No. 2 and not the applicants were in possession of the property attached. That jurisdiction had been conferred by the Legislature exclusively on the Magistrate. The Sessions Judge, in the instant case, has committed a manifest error in usurping the jurisdiction which did not vest in him and in passing an order u/s 145 Code of Criminal Procedure.

5. The result is that this revision succeeds and is hereby allowed. The order passed by the III Additional District and Sessions Judge on August 27, 1980, is set aside. The case is remanded to the Court of the Magistrate having jurisdiction in the matter to decide afresh as to which of the party was in possession of the Immovable property at the time of the passing of the preliminary order or within

two months preceding the said date. The parties may file such additional documentary evidence before the Magistrate as they think proper. They, however, will not be permitted to adduce additional evidence.