

(1981) 12 AHC CK 0033

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 1920 of 1981

Mahesh Prasad Katiyar

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 04-12-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 145, 145(1), 145(4)

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 145, 145(1), 145(4)

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 145, 145(1), 145(4)

Citation : (1982) AWC 76

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : T.P. Asthana, for the Appellant;

Judgement

M. Wahajuddin, J.—Mahesh Prasad Katiyar has moved this application for quashing the order dated 16-3-1981 of the Magistrate (Annexure 3) and the order dated 4-5-1981 of the XIII Additional Sessions Judge ,Kanpur passed in revision No. 78/1981 rejecting the revision of the applicant and upholding the aforesaid order of the Magistrate.

2. The applicant is the landlord of the premises while opposite party No. 2 claims to be the tenant of a room in premises No. 65/86, Moti Mohal, Kanpur. Opposite party number 2 namely Munnoo Singh filed a complaint on 26-10-1979 maintaining that the applicant wrongly dispossessed him from the disputed accommodation on 29-8-1979. The Magistrate after seeking a report from the police station concerned passed a preliminary order u/s 145(1) of the Code of Criminal Procedure recording his satisfaction regarding apprehension of breach of peace centering round the dispute concerning the premises in question and inviting written statement. An order dated 16-3-1981 was ultimately passed by the Magistrate (Annexure 3) holding " that the present applicant took wrongful possession on 29-8-1979 of the premises and the application dated 26-10-1976 is within two months from that day and the present opposite party No. 2 will be

held to be in possession and his possession should not be disturbed unless a competent court passes any order and direction to the contrary. The present applicant then preferred a revision which was also dismissed vide order dated 4-5-1981. It would appear that in paragraph 7 of the application the applicant has wrongly stated that order 4-5-1981 is of the Magistrate while it is the order passed in revision as would also be borne out by paragraph 8 of the application.

3. One of the grounds urged is that two months period is not to be counted either from the date of the application or even from the date of preliminary order but would be counted from a much later date when the mind is exercised. This submission is against the provisions of Section 145(4) Code of Criminal Procedure which expressly lays down that the Magistrate would determine the possession on the date two month's prior to the date of preliminary order. It also provides as per amendment that if dispossession is within two months from the date of information received by the Magistrate, the party dispossessed is to be taken as if he is in possession.

4. The other submission made is that a Civil Suit No. 1576 of 1979 was filed in the court of Munsif City, Kanpur and an interim injunction was also granted on applicant's own showing the suit itself was dismissed on 30-10-1980. Apart from that the matter stands completely resolved by the pronouncement in the case of Kalap Din v. State 1970 AWR 410. Division Bench, holding that once preliminary order has been passed the Magistrate has to continue the proceedings and to decide it and pendency of any civil suit or any orders passed therein does not bar its jurisdiction to have resort to any proceeding u/s 145 Code of Criminal Procedure. It is further submitted that after the dismissal of the suit on 30-10-1979 a civil appeal No. 676 of 1980 was filed and an interim order dated 6-1-1981 which has been confirmed on 9-4-1981, staying dispossession of the applicant from the premises was obtained. It would, however, be found that such order was obtained during the pendency of the proceedings u/s 145 Code of Criminal Procedure when the Magistrate was already seized of the matter in the midst of the proceedings u/s 145 Code of Criminal Procedure. As already observed once a preliminary order has been passed the Magistrate is bound by law to continue such proceedings and pass a final order and such proceeding cannot be dropped unless in between the Magistrate comes to any conclusion that there is no apprehension of breach of peace.

5. It is urged that the Magistrate should have resorted to a proceeding under Sections 107 and 116 Code of Criminal Procedure rather than under this Section. The principles laid down in the case in Kalap Din (supra) completely repelled such submission. In case of Kalap Din (supra) following two points arose for decision and were formulated:

(1) "Whether proceedings u/s 145 Code of Criminal Procedure can be initiated or continued when a civil suit between the same parties and relating to the same property is pending in a court of competent jurisdiction ?

(2) When the rights relating to the property forming the subject matter of the proceedings u/s 145 Code of Criminal Procedure have been adjudicated upon by a court of competent jurisdiction, whether the decision of that court is binding on the Magistrate and should the Magistrate drop the proceedings to give to conclude the proceedings u/s 145 Code of Criminal Procedure in accordance with the procedure contained therein ?

6. The first point was answered in affirmative, on the second point it was held that the decision of court of competent jurisdiction is not binding on the Magistrate and he cannot drop the proceeding to give effect to such decision. He should proceed to conclude the proceedings u/s 145 Code of Criminal Procedure and give that finding u/s 145(4) Code of Criminal Procedure. The following observations made in the case of R.H. Bhutani v. Miss Muni 1969 AWR 59 fortifies such view:

The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under Sub-section (1) or Sub-section (6).

7. I, therefore, find that the Magistrate rightly proceeded to conclude the proceedings u/s 145 Code of Criminal Procedure and determine possession under Sub-clause (4) and as to further pass an order under Sub-clause (6) of that Section.

8. So far as the finding of fact recorded by the Magistrate and upheld in revision are concerned it is a well settled law that the court exercising its inherent power would not enter into such questions of facts as if sitting as a court of appeal. In fact, learned Magistrate as well as learned Additional Sessions Judge in revision both fully discussed and considered the evidence that was led. The learned Additional Sessions Judge has also fully discussed the matter of continued apprehension of breach of peace and has given cogent reasons for his finding on the point.

9. In the result the application u/s 482 CrPC is dismissed.