
(2000) 03 OHC CK 0053
In the Orissa High Court
Case No : Criminal Revision No. 125 of 1996

Mangru Bhagat

APPELLANT

Vs

Bhawla Oram and Others and Bijli Bhagat

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 397, 401

Citation : (2001) CriLJ 1999 : (2000) 1 OLR 541

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : B.P. Ray, P.C. Rout, P.K. Pattnaik, L.M. Nanda, for the Appellant; S.K. Padhi, D. Mohapatra, S. Panda and S.K. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard.

2. This is a peculiar case of its own nature. The 1st party in Criminal Misc. Case No. 728/92 of the Court of Executive Magistrate, Panposh has filed this revision against the reversing order dated 12.3.1996 passed by the learned Addl. Sessions Judge, "Rourkela in Criminal Revision No. 23/94 against the final order u/s 145. Cr.P.C. of the Executive Magistrate declaring the possession of the 1st party vide order dt. 7.1.1.1994.

3. It appears from the certified copy of the order dt. 7.11.1994 that after perusal of the evidence on record, learned Executive Magistrate declared the possession of the 1st party on the basis of an ex pane decree he obtained in a civil suit and negated the contention of the 2nd party since they failed to show that they were successful in setting aside the ex pane decree. The 2nd party members preferred the aforesaid Criminal Revision in the Court of Addl. Sessions Judge, Rourkela. Though the whole fact and evidence was available before the Addl. Sessions Judge that in a recent civil suit a decree was passed in favour of the 1st party in the year 1992 declaring the title of the 1st party and

permanently injunction the 2nd party not to disturb the possession of the 1st party, yet learned Addl. Sessions Judge remanded the matter for fresh consideration as to whether the 1st party was dispossessed within a period of two months from the date of preliminary order. Against that order petitioner has approached this Court in this revision. It may be noted here that the learned Addl. Sessions Judge completely misconceived the provision of law inasmuch as it is the settled position of law that a recent Civil Court decree shall be respected in the Criminal Court and that principle should have been followed by the Addl. Sessions Judge.

4. As at the outset this Court has observed that this is a peculiar case of its own nature, to justify the same it may be noted here that the proceeding u/s 145, Cr.P.C. was initiated at the instance of the police. Learned counsel appearing for the petitioner states that though he intimated to the Magistrate regarding the decree passed by the Civil Court and filed the documents, yet learned Magistrate proceeded with the proceeding u/s 145. It is rightly stated by the learned counsel appearing for the 2nd party/opp. parties that in view of the Civil Court decree the proceeding u/s 145 should have been dropped in accordance with the provision in Sub-section (5) of Section 145, Cr.P.C. and it should not have proceeded any more. Learned counsel for the petitioner though agrees to that proposition, but states that in the present case the Magistrate proceeded with the proceeding at his own instance and not at the instance of the 1st party. Since the Civil Court after making a hearing, may be ex pane hearing, has decreed the suit, therefore, by 7.11.1994 learned Magistrate was functus officio to deal with an application u/s 145, Cr.P.C. Under such circumstances, this Court set aside the order dt. 7.11.1994 of the learned Executive Magistrate as well as the judgment in Criminal Revision No. 23/94. In other words, this Court observes that there was no necessity to adjudicate the matter u/s 145, Cr.P.C. in view of a recent Civil Court decision. The Criminal Revision is allowed accordingly.