

(1956) 10 AHC CK 0017
In the Allahabad High Court
Case No : Criminal Ref. No. 377 of 1955

Maqsood Ali Khan and Others

APPELLANT

Vs

Ahmad Sayeed Khan and Others

RESPONDENT

Date of Decision : 16-10-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146
Criminal Procedure Code, 1898 (CrPC) — Section 145, 146
Criminal Procedure Code, 1898 (CrPC) — Section 145, 146

Citation : (1957) 27 AWR 113

Hon'ble Judges : Asthana, J

Bench : Single Bench

Advocate : K.B. Garg, s 1 and 2, for the Appellant; O.N. Mehrotra and Chaudhary Kadar Nath, for the Respondent

Judgement

Asthana, J.—This is a reference by the learned Additional District Magistrate, Bulandshahr, recommending that the order of the learned trial Magistrate rejecting the application of the applicant for the release of the attached property may be set aside and the property in dispute may be released in favour of the applicant.

2. It appears that the applicant Maqsood Ali Khan made an application u/s 145 Code of Criminal Procedure in respect of the disputed property. The learned Magistrate attached the property after he was satisfied from the police report that there was an apprehension of the breach of the peace and passed a preliminary order directing both the parties to file their written statements. In compliance of the aforesaid order both the parties filed their written statements and claimed possession over the property in dispute. The learned Magistrate was unable to come to any definite conclusion with regard to possession after a consideration of the evidence produced by the parties and he, therefore, passed an order u/s 146, Code of Criminal Procedure directing the continuance of the attachment till one of the parties had got his right established to the property from the competent court.

3. It appears that Maqsood Ali Khan had already made an application for mutation of his name over the property in dispute in the revenue court and that case was pending at the time of the hearing of the case u/s 145, Code of Criminal Procedure. This mutation case was subsequently decided in favour of the applicant and it was ordered that the disputed property was to be mutated in his name. An appeal was filed against this decision before the Commissioner who stayed the order of the Assistant Collector regarding the mutation of the name of the applicant. After the applicant had obtained the decision of the Assistant Collector in the mutation case in his favour he made an application to the learned Magistrate for the release of the attached property in his favour. The learned Magistrate rejected the application on the ground that the order of the Assistant Collector for the mutation of the name of the applicant had been stayed by the Commissioner till the disposal of the appeal pending before him. Against this decision of the learned Magistrate the applicant went up in revision before the learned District Magistrate. He was of the opinion that the learned Magistrate was not bound to wait till the decision of the appeal by the Commissioner, nor he was bound by the stay order which had been passed by the Commissioner and which was addressed to the Assistant Collector who had decided the mutation case. Relying on a decision reported in *Ram Sri v. Sri Krishan and Ors.* 22 A L J 803 he came to the conclusion that the learned Magistrate should have released the attachment in favour of the applicant after he had obtained the mutation order in his favour from the competent revenue court which was that of the Assistant Collector, 1st Class.

4. It does not appear from the record whether the opposite parties to the Criminal case u/s 145, Code of Criminal Procedure namely, Ahmad Sayeed Khan, Insad Khan and Aziz Khan, were parties to the mutation case which had been filed by the applicant Maqsood Ali Khan and which was decided in his favour. There can be no doubt that if these persons were no parties to the mutation case and decision given in that case in favour of the applicant will not affect the rights of these persons, nor any order could be passed by the learned Magistrate in the case u/s 145, Code of Criminal Procedure against them on the basis of the decision in the mutation case. It has been contended on their behalf that they were no parties to the mutation case and as such they were not bound by the decision in that case, nor the learned Magistrate could order the release of the attached property in favour of the applicant on the basis of the decision in the mutation case. Learned Counsel for the applicant is not in a position to say whether Ahmad Sayeed Khan and others were parties in the mutation case or not. There is no doubt that in case these persons were parties to the mutation case the decision in that case could form the basis of the release of the attached property in favour of the applicant irrespective of the fact whether an appeal was pending from that decision and whether a stay order had been passed by the appellate court in the mutation case. As there is nothing on the record to indicate whether Ahmad Sayeed Khan and others were parties to the mutation case it is not possible at this stage to direct the release of the attached property in favour

of the applicant. Maqsood Ali Khan on the basis of the mutation order which was passed in his favour in the revenue case by the Asstt. Collector.

5. In the circumstances I order that the attached property shall be released in favour of the applicant Maqsood Ali Khan in case the learned Magistrate is satisfied that the opposite parties, namely, Ahmad Sayeed Khan Insad Khan and Aziz Khan, were parties to the mutation case which had been started by Maqsood Ali Khan and which was decided in his favour. In case he comes to the conclusion that they were no parties to the mutation case, then the property in dispute shall remain attached till one of the parties has got his title established from the competent court. The reference is decided accordingly.