
(1969) 11 AHC CK 0026
In the Allahabad High Court

Mata Prasad and Others

APPELLANT

Vs

Shri Sahdeo Prasad and Others

RESPONDENT

Date of Decision : 17-11-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(1)

Citation : (1970) CriLJ 1680

Hon'ble Judges : O.P. Trivedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

O.P. Trivedi, J.—This application in revision has been filed by Mata Prasad and 26 others.

2. It appears that the present applicants who are 27 in number filed an application u/s 145, Code of Criminal Procedure before the Sub-Divisional Magistrate Balrampur, district Gonda, alleging that they were in cultivatory possession of different portions of certain plots on behalf of Kailash Chandra and Udai Pratap Singh on Batai. It was alleged that the said "Kailash Chandra and Udai Pratap Singh had transferred separate portions of the said land by 13 separate sale deeds on 13-6-1968 in favour of opposite parties 1 to 13 who were trying to disposes the applicants from the separate portions of the plots in their possession and there was an apprehension of breach of peace between the parties. On this application the Magistrate called for a report from the police which submitted 28 separate reports to the effect that there was a dispute between the parties and there was apprehension of breach of the peace. Upon this report the Magistrate made a preliminary order u/s 145 (1), Code of Criminal Procedure on 7-8-1968 and directed attachment of the disputed property on 11-8-1968. Twenty eight such separate preliminary orders were passed concerning several parcels of the disputed plots over which applicants 1 to 27 and one Chhotey Lal who has not joined in this application claimed to be in cultivatory possession.

3. Subsequently the Magistrate referred the 28 disputes to the civil Court by one order dated 7-11-1968 u/s 146, Code of Criminal Procedure. This order was challenged in revision before the Additional Sessions Judge, linked Court at Gonda. The same having been dismissed they come to this Court. After hearing the learned Counsel for the parties I am of the opinion that the order of the Magistrate dated 7-11-1968 was wholly illegal. The application which was moved by the present applicants and Chhotey Lal clearly suffered from multifariousness because of the 28 applicants who had joined in one application u/s 145, Code of Criminal Procedure claiming possession over separate and distinct portions of land and secondly because opposite parties 1 to 3 claimed title under 13 different sale deeds over separate and distinct portions of land. There was nothing in common between the applicants and the opposite parties. The 28 disputes in the application u/s 145 were also separate and therefore clearly these separate disputes existing between several applicants and the opposite parties could not be lumped together because the evidence on the question of possession would have been different concerning the 28 disputes. The initial mistake therefore under which the Magistrate allowed himself to fall was that he started the proceedings on the basis of the application jointly made by 28 persons which in this way suffered from multifariousness and in proceedings on the basis of such a faulty application he started proceedings which themselves suffered from multifariousness. The proceedings therefore were clearly illegal. The case is clearly covered by the observations made by this Court in the case of Sarupa, v. State 1966 All LJ 1026. This case was not properly understood by the Civil and Sessions Judge when he thought that it was distinguishable on facts. It was observed in the case of 1966 All L J 1026 (Supra):

I am clearly of the opinion that in a case like this where the various plots claimed by Dhumi Khan was in possession of different parties who claimed possession over them under different titles and there was nothing common as between the different contestants it was wholly illegal to take recourse to the provisions of Section 143 against all of them in one proceedings.

The remark of the Civil and Sessions Judge in his judgment that 28 separate applications u/s 145, Code of Criminal Procedure were made before the Magistrate does not appear to be borne out from the record. Learned Counsel for the parties could not point out to me any such applications. They could point out only one application u/s 145 signed or thumb marked by 27 applicants and Chhotey Lal.

For the above reasons I allow the revision and quash the proceedings u/s 145, Code of Criminal Procedure. The order of attachment passed by the Magistrate shall stand withdrawn.