

(1994) 12 GAU CK 0004

In the Gauhati High Court

Case No : Criminal Revision No. 504 of 1994

Md. Kubat Ali and Others

APPELLANT

Vs

Smt. Pinjira Begum

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 482

Citation : (1995) CriLJ 1754

Hon'ble Judges : B.N. Singh Neelam, J

Bench : Single Bench

Advocate : B. Ullah, for the Appellant; J. Ahmed, D.H.M.R. Khan and Z. Iqbal, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Singh Neelam, J.—This Criminal Revision is preferred by the petitioners under the provisions of Section 482 of the Code of Criminal Procedure, 1973 and under Article 227 of the Constitution of India against the preliminary order so passed by the learned Additional District Magistrate, Kamrup, Guwahati on 3-6-94 in Case No. 231 M/94 drawing up a proceeding u/s 145(1), Cr. P.C. initiating a proceeding u/s 145, Cr. P.C. between the parties relating to the land in question, i.e., 3 Bs 2 Ks 9 Ls of cultivable land covered by Dag No. 536 of KPP No. 863 situated at Village Saniadi, Mouza Ramdia, PS Hajo in the District of Kamrup, Assam bounded by - North Md. Habib Rahman, North Md. Sahar Ali, East Road and West Md. Burah Ali.

2. Heard Mr. B. Ullah, learned counsel for the petitioner and Mr. J. Ahmed, learned counsel for the opposite party.

3. The petitioners in this Criminal Revision Petition figured as the members of the second party in the said 145 proceeding. On behalf of the petitioners it is submitted that the impugned order initiating a proceeding u/s 145, Cr. P.C. is bad in law because before the learned Court below there was no sufficient material as

to initiate the proceeding in question. It is further pointed out that the dispute between the parties is of a civil nature and without calling for the police report mechanically, the impugned order was passed, which has caused great prejudice to the petitioners. It is further pointed out that if there is a dispute between private individuals and even if there is likelihood of breach of peace on that score alone a proceeding u/s 145, Cr. P.C. is not expected to be initiated unless the Magistrate is satisfied that they apprehended breach of peace as to disturb the public tranquillity. In the instant case, as submitted by the learned counsel for the petitioners, the learned Court below has not even taken the care as to determine whether there was likelihood of any disturbance of public tranquillity. Furthermore, it is argued that it was incumbent on the part of the learned Court below as to assign reasons for his satisfaction which led him to pass preliminary order u/s 145(1), Cr. P.C. In this back ground it is submitted that the impugned order is also silent on this score. Lastly, it is submitted that the learned Court below has committed another error by passing a composite order on the same day, i.e., on 3-6-94 also by attaching the land in proceeding under the provisions of Section 146(1) of Cr. P.C. when there was no such emergency. In support of his contention made above, the learned counsel for the petitioners claimed himself to be fortified with three of the reported cases so cited and they are - (1) (1986) 2 GLR 167 (Maqbul Hussain v. Syadur Rahman), (2) Shankarlal Vs. Alhaz Khaja Abdul Hasan and another, and (3) Ashok Kumar Ghose Vs. Khetra Mohan Das, . Lastly, it is also submitted that the dispute between the parties is of civil nature and since it was difficult for the opposite party as to get an injunction order from the Civil Courts, therefore in the garb of the provisions of Section 145, Cr. P.C, a petition was so filed by the opposite party members figuring as the member of the first party in the said proceeding.

4. Mr. Ahmed, the learned counsel for the opposite party, on the other hand, has submitted that there is nothing wrong in the impugned order. It is argued that on the basis of the petition so filed by the opposite party before the learned Court below, proceeding u/s 145(1) Cr. P.C. was so initiated which was so done after the satisfaction of the learned Court below that there was bona fide land dispute between the parties or which he apprehended breach of peace between the parties as well as in the locality relating to the land in proceeding detailed in the schedule so furnished by the petitioners, i.e., the members of the first party. It is further pointed out that opposite party is a helpless lady who had acquired the land in proceeding on the basis of a registered deed of gift so executed on 5-7-93 by Deed No. 1213 the donor being none else but the petitioners of this Revision Case and since the petitioners, i.e., Md. Kupal Ali and others wanted to disturb the peaceful possession of the opposite party, i.e., Smti Pijira Begum and threatened to dispossess and grab the land by displaying dagger and dangerous weapons that Pinjira Begum was compelled under the circumstances as to make a prayer before the learned Executive Magistrate, Kamrup, Guwahati for initiation of a proceeding and maintenance of peace and tranquillity because there was every likelihood of breach of peace arising out of the possession of the land in

question. In this connection, the learned counsel for the opposite party has drawn attention to Annexure-1 which is the petition so filed by Pinjira Begum. Referring to Annexure-II, which is the impugned order, the learned counsel for the opposite party has further submitted that the learned Court below has not passed the order mechanically rather he has shown satisfaction for passing the preliminary orders u/s 145(1) Cr.P.C. and seeing the emergency has also attached the land in proceeding prohibiting entry of both the parties over the disputed land to prevent breach of peace. It is further pointed out that this is also not the case of the parties that any civil suit is pending relating to this land between the parties and therefore on no account it can be said that proceeding u/s 145, Cr. P.C. will not lie in the background of the facts and circumstances of this case. In support of his this contention the learned counsel for the opposite party has referred to a reported case Jhummal alias Devandas Vs. State of Madhya Pradesh and Others,

5. After hearing both the sides" learned counsel and also after going through the facts and circumstances of the case with that of the impugned order so passed by the learned Court below, I find that there was sufficient material before the learned Court below as to initiate a proceeding u/s 145(1) , Cr. P.C. in the present case. The Executive Magistrate u/s 145(1) , Cr. P.C. is empowered to initiate a proceeding after being satisfied either from a report of a police officer or upon other information and in the present case since the matter was initiated by the opposite party members by putting a petition before the learned Executive Magistrate, the learned Court below after looking into the petition filed by the first party who is figuring here as opposite party which is supported by an affidavit and also after hearing the learned counsel on behalf of the first party, i.e., Pinjira Begum has shown his satisfaction with regard to land dispute existing, which was very well within his jurisdiction for which, according to him, breach of peace was apprehended not only between the parties but also in the locality as specifically shown in the impugned order. The reason assigned by him for his satisfaction to initiate the proceeding in question is the contents of the petition filed by the first party supported by an affidavit and the argument so advanced by the learned counsel for the first party showing the urgency for granting a speedy remedy by bringing the parties before the Court and to prevent the apprehension of breach of peace in the locality. As regards the order so passed u/s 145(1) , Cr. P.C. attaching the land in proceeding, it is an interlocutory order which has also not been challenged in this Criminal Revision Petition.

6. Thus in my considered opinion, I find that the impugned order on no account can be said to be mechanical and it has been passed showing satisfaction relating to the apprehension of breach of peace between the parties and the locality, the bone of contention being the land in proceeding and there is thus substantial compliance with the requirements so contained u/s 145(1) , Cr. P.C. and that being the position the impugned order does not require any interference. Finding no merit in this Criminal Revision Petition on the grounds

detailed above, the same is hereby dismissed. The stay order dated 27-9-94 passed by this court is also hereby vacated.