

(1925) 03 PAT CK 0001
In the Patna High Court

Munni Lal Sao and Others

APPELLANT

Vs

Gatti Ahir and Others

RESPONDENT

Date of Decision : 06-03-1925

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 144, 145

Citation : 88 Ind. Cas. 845

Hon'ble Judges : Kulwant Sahay, J; John Bucknill, J

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an application on behalf of the second party in a proceeding u/s 144 of the Cr.P.C. against an order of the Sub-Divisional Magistrate of Buxar, dated the 19th of December, 1924, whereby he declared the first party to be in possession of the land in dispute and made an order restraining the second party from interfering with the possession of the first party.

2. The petitioners went before the District Magistrate against this order under Clause (a) of Section 144 of the Cr.P.C., praying that the order passed by the Sub-Divisional Magistrate might be rescinded. The learned District Magistrate has rejected the application by his order, dated the 17th of January, 1925.

3. The point raised by the learned Counsel for the, petitioners is that the dispute in the present case was a bona fide dispute concerning 120 bighas of land in the village and that the Magistrate had no jurisdiction to initiate proceeding u/s 144 of Cr.P.C. but he could only act u/s 145 of the Code. The question as to the powers of the Magistrate to act u/s 144 or u/s 145, Cr. P. C, has been considered by this Court in several cases. In the Full Bench Case of Shebalak Singh Vs. Kamabuddin Mandal and Others, , Mullick, J., observed as follows: "Section 144 is of general application and contains nothing which ousts the Magistrate's jurisdiction in cases of bona fide disputes as to possession of land. But where Section 107 or Section 145 will meet the requirements of the case, Section 144 is not an appropriate remedy and if it is found that the danger was not so imminent that it could not be otherwise averted an order u/s 144 will generally

be held to have been made without jurisdiction. Where it is clear upon the materials before the Magistrate that one party is in possession and that another whose claim to possession is a mere pretence is threatening to interfere with that possession the Magistrate is clearly entitled to resort to the special summary procedure of Section 144 if immediate prevention or speedy remedy is desirable". Jwala Prasad, J., in considering the same question agrees with Mullick, J., that it is open to a Magistrate to take proceedings u/s 144 in cases of disputes relating to possession of land when there is an imminent danger of a breach of the peace in connection with land disputes; but his Lordship, observed as follows "To me it appears that when, in the course of a proceeding, u/s 144 of the Cr.P.C. the Magistrate finds, that there is a bona fide dispute as to possession of land likely to cause a breach of the peace he is bound immediately to take action u/s 145. Chapter XII comprising that section is headed "Disputes" as to immovable property". Then his Lordship quotes Section 145. He is of opinion that in such cases the proper procedure to adopt is a proceeding u/s 145 and not one u/s 144 of the Cr.P.C. The same view was expressed by Roe and Imam, JJ., in *Kaniz Amino, v. Emperor* 47 Ind. Cas. 65 : 3 P.L.J. 243 : 4 P.L.W. 354 : 19 Cr.L.J. 869, Their Lordships laid down the following two propositions, first, that the Magistrate is not required to take proceeding u/s 145 if he is satisfied that by other methods he can avoid a breach of the peace; and, secondly, that the use of Section 144, Cr.P.C., is a suitable method of avoiding a breach of the peace only if it be clear upon a reading of the Police Report that the claim of the party creating disturbance is not a claim made in good faith. It is, therefore, necessary to see in the present case whether the dispute between the parties was a bona fide dispute relating to the possession of the land in dispute. Now it appears from the orders of the Courts below the land in dispute was originally parti and full of thorn and belonged to Musammat Sheobasi. Ramanand Sahu who was her son-in-law used to look after the property on her behalf. The petitioners Nos. 1 and 2 are mortgagees in possession of the village. The other petitioners claim to have taken settlement of the land in dispute from petitioner Nos. 1 and. 2. The case of the petitioners was that the land was the bakasht land of the proprietors. The case of the opposite-party was that they had taken settlement of this land from Ramanand Sahu thirteen or fourteen years ago and that they have been since then in possession on payment of rent to the landlords, but that recently the landlords have been trying to oust them from possession of the land because they refused to pay enhanced rent. On the 23rd of September 1924 the opposite party filed an application before the Sub-Divisional Magistrate stating the fact of their possession and the fact that there was a likelihood of a breach of the peace as the landlord and his men would try to oust and remove the crops grown by them and they prayed for proceedings u/s 144. The learned Magistrate referred the petition to the Police for report. The Police submitted a report on the 11th of October 1924 in which they reported that the opposite party were in possession; and they recommended that proceedings u/s 144 might be taken against the first party. The learned Magistrate, however, on a perusal of the Police Report, made an order on the 24th of October 1924 that no action was necessary. On the 17th

of November 1924, a telegram appears to have been sent by Bijay Singh, who is one of the petitioners in this case, to the Sub-Divisional Magistrate, stating that the opposite party were threatening to commit rioting and murder and to damage the crops; and asking the Magistrate to protect peace. Upon the receipt of this telegram the Sub-Divisional Magistrate again asked the Police for a report and on the Police, Report he, on the 17th of November 1924, passed the following order, "Police Report dated the 11th October 1924, reconsidered. Restrain the second party u/s 144, Cr.P.C, from interfering with the possession of the first party over the plots named in Police Report. Cause may be shown against the order on or by 27th November 1924." Now upon the authorities, just referred to, this order of the 17th of November 1924 was a perfectly proper order and it was within the competence of the Magistrate to pass this order to prevent a breach of the peace. The telegram sent by one of the petitioners showed that there was an urgent necessity of taking action to prevent a breach of the peace and the Magistrate was perfectly justified in taking emergency step by making order u/s 144 on the 17th of November 1924. In compliance with this order both parties appeared before him and showed cause. They produced documentary evidence and. it appears that the documents produced by the present petitioners consisted of the finally published Record of Rights, certain batwara papers and other document. The survey khatian showed the land in dispute to be the proprietor's bakast land. The partition paper also showed the land to be the proprietor's bakasht land. It was, therefore, clear upon the evidence produced by parties that there was a bona fide dispute as regards the possession of the land. The presumption of the Record of Rights and of the partition papers was in favour of the petitioners; on the other hand, the Police Report was in favour of the opposite party, and their allegation was that they had taken settlement of this bakast land from Ramanand Sahu and that they had reclaimed the parti land. There was, therefore, clearly a case in which there was a bona fide dispute between the parties as regards possession. Upon the authorities referred to, when the Magistrate saw that there was bona fide dispute between the parties he ought to have at once initiated proceedings u/s 145 of the Cr.P.C. Instead of doing that he considered the statement filed by the parties and the documents produced by them, heard arguments and in effect made an order finding the first party to be in possession and declaring their possession and restraining the second party from interfering with the possession of the first party. I am of, opinion that when the Magistrate found that there was a bona fide dispute between the parties he ought to have called upon the parties to produce their evidence on the question of possession and to have proceed-dings to determine the question of possession in the manner provided by Section 145 of the Code. The order, however, of the learned Sub Divisional Magistrate, dated the 19th of December 1924, after two months from that date had no force; and it is contended by the learned Counsel for the opposite party that two months having expired and the order having spent its force, it is unnecessary to consider the legality of this order.

4. As I have said, the order purports to be one u/s 144, Cr.P.C., and, therefore, after the expiry of two months this order has absolutely no force. The observation of the learned Sub-Divisional Magistrate as regards possession of the first party is simply an incidental observation in order to enable him to make an order u/s 144. This observation cannot have the force of an order u/s 145 of the Code and is, therefore, of no use in determining the question of actual possession, if the question arises in a subsequent proceeding.

5. The order having spent its force it is not necessary to set it aside. Under these circumstances the application must be dismissed.

Bucknil, J.

6. I agree.