

(2019) 04 CHH CK 0092

In the Chhattisgarh High Court

Case No : Criminal Misc. Petition No. 170 Of 2015

Mustak Ahemad Khan And Ors

APPELLANT

Vs

Kalpana Wankhede And Ors

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 145, 145(4)

Citation : (2019) 04 CHH CK 0092

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Manoj Paranjpe, Anurag Singh, P.K. Tulsyan, Anant Bajpai

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This petition is directed against the order of the revisional court, whereby the revisional court has affirmed the order of the Sub- Divisional Magistrate directing restoration of possession of the disputed land in favour of respondent No.1.

2. Mr. Manoj Paranjpe, learned counsel for the petitioners, would submit that at the instance of respondent No.1 herein, proceeding under Section 145 of the CrPC was initiated which was not maintainable in law and thereafter, though the case was fixed for evidence on several occasions, but evidence could not be led and respondent No.1 who had moved the application did not lead any evidence and ultimately, the court fixed the case for argument and the impugned order was passed by the learned Magistrate on 21-5-2014 without there being any evidence on record which runs contrary to Section 145 of the CrPC and the learned Additional Sessions Judge despite having recorded a finding that no evidence was recorded, yet, dismissed the revision holding that opportunity was given to the parties to lead evidence which is unsustainable and bad in law.

3. Mr. P.K. Tulsyan, learned counsel for respondent No.1, would support the impugned order.

4. I have heard learned counsel for the parties and also considered the rival submissions made herein and went through the record with utmost circumspection.

5. It is apparent from para 10 of the revisional court's order that the matter was fixed from time to time lasting for four years for evidence commencing from 12-4-2010 till 23-12-2013, but respondent No.1 did not lead any evidence, neither commenced evidence nor led evidence and abruptly, on 23-12-2013, the Sub-Divisional Magistrate directed the case to be listed for final hearing on 29-1-2014 and thereafter, ultimately passed the order on 21-5-2014.

6. At this stage, it would be appropriate to notice Section 145(4) of the CrPC which reads as under: -

"(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)."

7. A careful perusal of sub-section (4) of Section 145 of the CrPC would reveal that after coming into force of the CrPC in 1974, the issue of possession cannot be decided on the basis of affidavit alone and evidence of the parties has to be recorded and documents have to be proved by the parties and then only, the issue of possession as per Section 145 of the CrPC should be decided which has not been followed and as such, Section 145 of the CrPC has been followed in its complete breach which makes the order contrary to the provisions contained in Section 145(4) of the CrPC. The learned Additional Sessions Judge though noticed the illegality, yet, proceeded to reject the submission based on no evidence on the basis that opportunity was given to respondent No.1 herein to lead evidence. Firstly evidence has to be lead by the non-applicant / respondent No.1 herein and then only the applicants / petitioners herein were obliged to give evidence in rebuttal. The fact remains that respondent No.1 led no evidence at all during the proceeding under Section 145 of the CrPC.

8. In view of the aforesaid, the order passed by the learned Magistrate dated 21-5-2014 as well as the order passed by the learned Additional Sessions Judge dated 7-2-2015 are set aside and the matter is remitted to the file of the Sub-Divisional Magistrate (Nagar), Jagdalpur for hearing and disposal in accordance

with law after giving the parties the opportunity to lead evidence and after hearing the parties within three months from the date of receipt of a copy of this order.

9. The petition is allowed to the extent indicated herein-above.