

(1952) 02 MAD CK 0038

In the Madras High Court

Case No : Criminal Revision Case No. 188 of 1951 and Criminal Revision
Petition No. 187 of 1951

Nandipi Nagi Reddy

APPELLANT

Vs

Vadde Venkatappa

RESPONDENT

Date of Decision : 21-02-1952

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(5)

Citation : AIR 1953 Mad 436 : (1952) 2 MLJ 163

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : G.K. Venkatanarasimhan, P.P, for the Appellant; A. Bhujanga Rao, for the Respondent

Judgement

Ramaswami, J.—This is a criminal revision case which has been filed against the order made by the Sub-Divisional Magistrate of Dhone in M.C. No. 2 of 1950 on 21-12-1950.

2. The facts are: The dispute in this case relates to two items of lands situated at Dharmavaram, hamlet of Dhone. On 12-6-1947 the A party put in a petition before the then Sub-Divisional Magistrate of Dhone alleging that in respect of four items of lands shown in the schedule annexed thereto there was a dispute between him and the B party respondents likely to cause a breach of the peace and praying that action should be taken against the B party respondents u/s 145, Criminal P. C. This petition was forwarded to the Sub-Inspector of Police, Dhone. On the report of the Police dated 20-6-1947, the learned Magistrate passed a preliminary order on 25-6-1847 directing both sides to put in written statements of their respective claims. Both sides, after this preliminary order, put in their respective written statements.

In the course of the enquiry that followed it was discovered that the real dispute between the parties was not with regard to the four items of land, described in the A party respondent's petition dated 12-0-1947 in respect of which properties

the preliminary order dated 25-6-1947 was issued but with regard to only two other lands viz., an extent of 1.50 acres within specified boundaries of S. No. 755/A of a larger extent bearing the name of Mulakonda chenu "alias" Chendiah chenu and an extent of 2.50 acres within specified boundaries in S. No. 753 of a larger extent bearing the name of Namagiriah chenu "alias" Bapana Ramiah Chenu. On the discovery of this error the Additional First Class Magistrate of Nandyal to whom the case had been sent for disposal passed a second preliminary order on 24-12-1947 in respect of these two items of properties. Both parties filed fresh written statements. The learned Magistrate passed an order on 31-3-1948 under Sub-section (6) of Section 145 declaring the second respondent of the B party to have been in possession and entitled to possession of the two items until evicted therefrom in due course of law.

3. In the meanwhile after the first preliminary order dated 25-6-1947, the learned Magistrate on a petition put in by the A party ordered attachment of the properties and appointed the Sub-Inspector of Police, Dhone, as Receiver with a direction that the Receiver should take possession and lease the lands for 1947. The Sub-Inspector of Police took possession and has been cultivating the lands.

4. The final order dated 31-3-1948 to which reference has been made just now was taken up in revision to the High Court and my learned- brother Somasundaram, J. by his order dated 18-3-1949 in Criminal Revision Case No. 577 of 1948 set aside the order of the lower Court and remanded the entire matter for disposal according to law, in the light of the following observations, by some Magistrate other than the Magistrate whose order was set aside:

"The case of the petitioner here is that he was dispossessed within two months prior to 25-6-1947. The properties were admittedly leased out and the lessees were in possession from 16-7-1947. In the circumstances the Court must find who was in possession on 24-12-1947. That the respondent was in continued possession could not be correct, as lessee was in possession from 16-7-1947."

5. Thereupon both parties filed the following petition in the Court of the Additional First Class Magistrate Kurnool:

"The parties to the above case beg to state that they referred their dispute to arbitrators who have passed the award. For the fulfilment of the conditions of the award 15 days time is wanted. It is prayed that your honour may be pleased to adjourn the case to some day after 15 days from this date."

6. On 19-1-1950 the respondent herein Vadde Venkatappa filed a petition in the following terms:

"(According to our petition) arbitrators were appointed and they gave their award about 3 months ago. But the award was not only inequitable and obviously unjust but also beyond the terms of reference to the arbitrators. The petitioner did not therefore consent to the terms of the award and the award does not bind the petitioner. The petitioner therefore prays that this Court be pleased to go on

with the enquiry into the above M. C. and dispose it of on merits."

7. The other party viz., the B party Nadipi Nagi Reddy naturally protested against this and filed a petition that this should not be done because not only had an award been passed but that the Court granted an adjournment and stayed the proceedings on that footing and that the A party having agreed to abide by the award after a lapse of time could not be allowed to revive the proceedings in this fashion and that the periodical adjournments and stay of this case attracted the provisions of Sub-section (5) of Section 145, Criminal P. C.

8. The other party, namely, Vadde Venkatappa filed a rejoinder that on the failure of the settlement of the dispute by arbitration the parties became relegated to the position in which they had been placed by the order of the High Court on remand and that it followed that the dispute between the parties still existed and it has to be decided by the Court and that the enquiry should be proceeded with.

9. The learned Additional First Class Magistrate of Kurnool passed an order on 24-4-1950 that the trial of the case should be proceeded with.

10. In pursuance of the aforesaid order the trial of the case was proceeded with by the Sub-Divisional Magistrate, Dhone, who had succeeded the previous Magistrate under the separation scheme and he passed an order in M. C. 2 of 19150 that he accepted the care of the A party viz., Venkatappa and found that he was forcibly and wrongfully dispossessed of the lands by the B party respondents on or about 9-6-1947, a date within two months prior to 16-7-1947 when the Court took possession of the properties through the Receiver appointed by it, and that A party should be treated as in possession by 24-12-1947. The Magistrate therefore made a declaration in favour of the A party and made the consequential order that the A party will be restored to possession after the crop of 1950 had been removed by the purchaser in the auction held by the Sub-Inspector of Police, Dhone, under the orders of Court during the pendency of the proceedings and that the A party respondent will be paid out the sale proceeds of the crop of the lands in dispute lying in Court and that the B party respondent should pay Rs. 75 to the A party respondent by way of his costs in these proceedings. This criminal revision case has been filed against this order.

11. The grounds for interference with this order are as follows, viz., that the learned Magistrate should not have acted on the evidence recorded by the previous Magistrate without further enquiry; that two important witnesses who had been summoned by an order dated 26-7-50 who could have thrown material light were not examined in spite of request; that when the High Court directed the Magistrate to find out who was in possession on 24-12-1947 the date of the subsequent preliminary order the Magistrate has found out only who was in possession two months prior to 16-7-1947; that when on this finding the respondent was dispossessed even on 9-6-47 the order giving possession to Venkatappa is unsustainable; that even this alleged dispossession on 9-6-47 is contradicted by the petitioner's own statement that immediately after 30-4-47

he was prevented from harvesting; that the petitioner went behind the written statement and the oral testimony by stating that subsequent to Ex. P. 1 that is to say, 30-4-47, he sowed and the respondents spoiled it and that the lower Court erred in view of the fact that the parties had referred the whole matter to the arbitrators on 6-8-49 and the arbitrators had given in award and in these circumstances the proceedings could not be continued unless there was a present apprehension of the breach of the peace and that this allegation of apprehension of breach of the peace could not be deduced simply because one of the parties long after the passing of the award chose to repudiate it; and that the alleged finding as to possession itself is vitiated by the facts set out in paras 11 to 15 of the grounds of appeal.

12. To my mind there is one fatal irregularity which has vitiated the entire proceedings of the learned Sub-Divisional Magistrate and it is concluded by authority. On similar facts it has been held by a Bench of the Calcutta High Court in -- "Kalananda Singh v. Rameshwar Singh", 15 Cal WN 271, that, where proceedings started in respect of a disputed ferry in September 1908 were stayed owing to the dispute having been referred to the Commissioner of the Division for arbitration but the arbitration having failed the Magistrate on 24-5-1910 purported to revive the proceeding? and called upon the parties to appear with evidence on 19-6-1910, the Magistrate acted without jurisdiction in reviving the proceeding merely because the arbitration proved ineffectual without being satisfied that there were fit a time sufficient grounds for proceeding under the section and without drawing up fresh proceedings for that purpose and that fresh proceedings should, if necessary, be drawn up on the basis of present circumstances and not on what existed in 1908; and it should not be assumed that the causes which existed in 1908 or 1909 still continued to exist.

It was also further held in that case that when the dispute was referred to arbitration the trying Magistrate recorded an order "further proceedings are unnecessary and they are therefore stayed", that the said order was in terms one u/s 145(5). Cr. P. C. and directly it was passed the Magistrate ceased to have jurisdiction, notwithstanding that by mistake he omitted to withdraw an order of attachment previously passed by him. This is precisely what has happened here and for ferry we have to substitute lands in Dharmavaram, hamlet of Dhone, for 1908 we have to substitute 1947 and for 19-6-1910 we have to substitute 1950.

13. In addition to these the lower Court should also have pondered over other considerations before proceeding with these proceedings u/s 145, Cr. P. C. The object of Section 145, Cr. P. C. is to prevent disturbance of public tranquillity and protect the realm from riots and commotions. The orders u/s 145, are merely Police orders to prevent breaches of the peace and it follows therefore that proceedings u/s 145 should not be readily continued in the following cases, viz., where there is ample time for the obtaining of a civil remedy, criminal action is injustice; where, in the circumstances of the case, proceedings u/s 107 have become more appropriate; where the object is to drive the other party to a suit

as a plaintiff with responsibility for a burden of proof which otherwise would not be his. In this case both parties had submitted their differences to an arbitrator and an award had been passed and one of the parties resiled from it. The proper thing is to go to the civil Court and not ask to be relegated to a previous state of things simply to jockey for a favourable position in the criminal Court and compel the other party to file a suit. Therefore looked at from these points of view also the lower Court should have dropped the proceedings and raised the attachment.

14. The Magistrate need not feel even now that because his order has been set aside and the proceedings are dropped u/s 145, Cr. P. C. he has no authority to deal with the attachment and the leasing out of the properties by the Sub-Inspector. On the other hand, it has been held recently by me in -- "*Velur Devasthanam v. State*", 1952 Mad WN 1 following -- "*Suryanarayana v. Ankineed Prasad*", 47 Mad 713 and -- "*Narasayya v. Venkiah*", 40 Mad 232 that a Magistrate dropping proceedings does not become "*functus officio*" but has jurisdiction to pass further orders for winding up the proceedings.

15. In the result, the order of the lower court is set aside and the proceedings u/s 145 , Cr. P. C. are dropped and the learned Sub-Divisional Magistrate is directed to dispose of the attachment proceedings according to law.