
(1979) 11 KAR CK 0007
In the Karnataka High Court
Case No : Crl. R.P. 570/79

Narasimha Prabhu and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-11-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1980) 1 KarLJ 154

Hon'ble Judges : Venkatesh, J

Judgement

1. This Petition is directed against the order dated 23-10-1979 passed by the Taluka Magistrate and Tahsildar, Mangalore Taluk, in proceeding No. MAG/CR/147/79-80 under S. 145 CrI.P.C. and the consequential order made by him in the said proceeding on the following day attaching some agricultural lands comprised in several survey numbers of village Padavu and appointing a receiver to be in possession of the same till the disposal of the case before him.
2. The petitioners and respondents 2 to 4 (herein) are "B" and "A" parties respectively before the learned Magistrate.
3. The proceeding was initiated on a report made to him by the Sub-Inspector of Police, Mangalore on 21-10-1979 alleging that there was a likelihood of breach of peace taking place in the lands in question and therefore urgent action was called for to prevent the same.
4. Before examining the correctness of the orders in question it may be necessary to know a few facts concerning the lands in question. These lands are situated on the outskirts of Mangalore town area. The lands belonged to one J.S. Pinto (since deceased). Concerning the possession and enjoyment of these lands there have been litigations between these two rival groups. The petitioners are claiming to be lessees of the lands and the contesting respondents are rival claimants. Claims were made by these parties for occupancy rights in the Land Tribunal, Mangalore Taluk. In two such proceedings the Land Tribunal-I Mangalore Taluk passed certain orders in the month of March, 1979 and the

same was called in question by the 2nd petitioner (herein) in W.P. No. 3618 of 1979. This Court has issued rule and has stayed the operation of the order of the Tribunal. The result is that the order of the Tribunal is kept under suspension.

5. The preliminary order dated 23-10-1979 impugned herein reads as follows:

"PROCEEDINGS OF THE TALUK MAGISTRATE MANGALORE TALUK.

No. MAG. CR. 147/79-80.

ORDER (UNDER SECTION 145 of Cr.P.C.)

Sub: Land Dispute at Padavu village between Babu Maistry and Thoyi Hengsu and Upendra Prabhu, Narasimha Prabhu and Sundara Shenoy. Apprehension of serious clash creating Law and order problem-preliminary order.

Read: Report from the Sub-Inspector of Police, Mangalore Rural Police Station presented on 23-10-1979.

It has been reported to me that there is serious land dispute between one Babu Maistry, Sundara Shenoy Upendra Prabhu, Narasimha Prabhu and Thoyi Hengsu and that there-is likelihood of breach of peace which may lead to serious law and order problem ending with bloodshed concerning the under-mentioned lands.

Schedule

S. No. Padavu village Extent

32/1 0-11

32/9 0-85

32/9 0-50

32/8 0-11

32/9B 0-32

32/1 0-90

23/1 0-60

32/2 1-00

32/1 0-65

"I have gone through the report of the Police Officer. I am satisfied from his report and upon other information that a dispute likely to cause a breach of the peace exists concerning the above lands within the local jurisdiction of this Court. Therefore, I require the parties-concerned in this dispute to attend this Court in person or by pleader on 24-10-79 at 3 p.m. at Taluk Office, Mangalore and put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Given under my hand and seal of this Court this 23rd day of October 1979.

Sd/-

Tahsildar and Taluk Magistrate,

Mangalore..."

The order passed on the following day reads as follows.

In the Court of the Tahsildar and Taluk Magistrate, Mangalore.

MAG. CR. 147/79-80.

"Pending disposal of the aforesaid application under S. 145 Cr.P.C., it is ordered by this Court on 24-10-79 as follows: The Sub-Inspector of Police, Mangalore Rural Police Station, in his report dated 21-10-1979 has reported that there is dispute on the property noted in the schedule below and apprehended breach of peace in the locality. Accordingly on satisfaction of the facts stated in the report this Court issued an order under Sec. 145 Cr.P.C. on 23-10-1979 asking the parties to put forth their claims.

"I have perused the statement of Smt. Thoyi Hengsu and Sri. Sundara Shenoy. I have also gone through their records produced by them, heard arguments regarding possession of the said lands.

It is hereby ordered that pending disposal of the claims, the properties mentioned in the schedule below is hereby attached and the Revenue Inspector, Mangalore "A" is appointed as a Receiver of the property till the disposal of the same.

Schedule

S. No. Padavu village Extent

32/1 0-11

32/9 0-85

32/9 0-50

32/8 0-11

32/9B 0-32

32/1 0-90

23/1 0-60

32/2 1-00

32/1 0-65

Sd/-

Tahsildar and Taluk Magistrate,
Mangalore..."

6. The learned Counsel for the petitioners submitted that the learned Magistrate had not complied with the requirements of law either in passing the first preliminary order or the second order appointing an interim receiver. His case is that the Magistrate had not stated in his order the grounds which had weighed with him in making that preliminary order. Therefore, according to the learned Counsel, the order does not satisfy the requirements of sub-sec. (1) of Sec. 145 Cr.P.C. In so far as the second order is concerned, the attack is that that order made under the first part of sub-sec. (1) of S. 146 Cr.P.C. does not spell out clearly the urgency that had necessitated the learned Magistrate to appoint an interim receiver. It appears, his client had filed a suit in O.S. No. 226 of 1969 against these contesting respondents and had obtained an order of temporary injunction against them. He submitted that that order was in force for almost nine years till it was dissolved, or vacated on the coming into force of Karnataka Act No. 27 of 1976 (The said Act came into force on 16-12-75). It is his case that assuming that as contended by the other side the interim injunction obtained by his client had been statutorily vacated he continued to be in possession of these lands and his possession was not divested. He further submitted that the provisions of Karnataka Act No. 27 of 1976 dissolving or vacating the ad interim orders made in respect of agricultural properties itself was ultra vires and unconstitutional and that separate steps are being taken to question the vires of the same. In support of his contention that the preliminary orders of the learned Magistrate do not satisfy the requirements of Ss. 145 and 146 Cr.P.C., the learned Counsel placed reliance on the decisions of this Court in: Chalure Gowda v. State of Karnataka, (1978) 2 Kar. L.J. 246, Kathanur Doddappa v. State of Karnataka, (1978) 2 Kar. L.J. 281 and Major Mirza v. State, (1979) 2 Kar. L.J. 36.

7. On the other hand, the learned Counsel appearing for the contesting respondents supported the orders and submitted that there are no reasons to interfere with the same at this stage. They place reliance on a decision of the Supreme Court in R.H. Bhutani v. Mani J. Desai, AIR 1968 SC. 1444 and another decision of this Court in Sukumar v. State, (1972) 3 Mys. L.J. 349.

8. In reply it was argued by the learned Counsel for the petitioners that far reaching changes have been brought about in S. 145 Cr.P.C., and that, in the circumstances, the ratio of the decision of the Supreme Court in Bhutani's (Supra) case, AIR 1968 SC. 1444, construing S. 145 as it existed prior to the coming into force of Code of Criminal Procedure 1973 may not apply.

9. A reading of sub-sec. (1) of Sec. 145 as it existed under 1893 Code and as it exists now, clearly shows that on this aspect of the question there has been practically no change in law. Therefore, it cannot be said that the ratio of the decision in Bhuthani's case, AIR 1968 SC. 1444 may not apply now.

10. It is observed in Chaluve Gowda's case, (1978) 2 Kar. L.J. 246 (supra) that a

mere statement in the order of the learned Magistrate that he was satisfied from the police report about the existence of a dispute is not sufficient and that he must also state the grounds that led to his satisfaction. It is further stated that he should record reasons for attaching the properties or appointing a receiver under sub-sec. (1) of S. 146 Cr.P.C. In Kathanur Doddappa's case, (1978) 2 Kar. L.J. 281 (supra) likewise it is stated that the learned Magistrate should state the grounds that had led him to pass the preliminary order. To that effect is the decision in Major Mirza's case, (1979) 2 Kar. L.J. 36 (supra) also. But, relying on Bhutani's case, AIR 1968 SC. 1444 this Court has observed in Sukumar's case, (1972) 3 Mys. L.J. 349 (supra) that the omission to state the reasons by the learned Magistrate in the order itself will not be fatal, if otherwise, there are materials to show that there existed facts which were, prima facie, sufficient to invoke his powers under sub-sec. (1) of S. 145 Cr.PC

11. As observed in Bhutani's case, AIR 1968 SC. 1444, two conditions must be satisfied for invoking sub-sec. (1) of S. 145 Cr.P.C. firstly, there should exist a dispute regarding an immoveable property, and secondly, that there should be materials to show that that dispute is likely to result in breach of peace. If the Magistrate is satisfied of these two conditions he can pass a preliminary order under sub-sec. (1) of S. 145 and may proceed to pass the other consequential orders also. In Bhutan's case, AIR 1968 SC. 1444, one of the grounds on which the High Court had struck down the preliminary order of the learned Magistrate passed under S. 145 was that he had not recorded reasons that had led him to pass that order. In this connection the following observations of the Supreme Court may be noted: (paras 9 & 10)

"The satisfaction under sub-sec. (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of materials for his satisfaction. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report and "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of materials which has satisfied the Magistrate.

The question is whether the preliminary order passed by the Magistrate was in breach of Sec. 145(1) that is, in the absence of either of the two conditions precedent. One of the grounds on which the High Court interfered was that the Magistrate failed to record in his preliminary order the reasons for his satisfaction. The section, no doubt, requires him to record reasons. The Magistrate has expressed his satisfaction on the basis of the facts set out in the application before him and after he had examined the appellant on oath. That means that those facts were prima facie sufficient and were the reasons leading to his satisfaction."

12. As can be seen from the preliminary order impugned in the instant case (extracted above) the learned Magistrate was satisfied from the police report and from the other information available to him that there existed a dispute likely to cause a breach of the peace concerning the lands in question. At the time of the hearing the learned Counsel for respondent-4 placed before me the certified copies of the report of the P.S.I Mangalore Rural Police Stn. to the learned Magistrate and an earlier letter he had written in this connection to the Chairman of the Land Tribunal, Mangalore, with copies of the same to the Superintendent of Police, Dakshina Kannada, and to the Deputy Superintendent of Police, Panambur sub-division. In the report he had submitted to the learned Magistrate on 21.10.1979 the P.S.I., has placed all the facts concerning this litigation between the parties and as to why he apprehends that the same may lead to a breach of the peace resulting in serious law and order problem. He has also referred to the interim stay passed by this Court in the writ petition referred to above and the reference to this fact by the Land Tribunal in its endorsement to him stating that if there is likelihood of breach of peace in the locality he, the P.S.I., may approach the Sub-Divisional Magistrate Along with his report not merely had be placed a copy of the letter he had earlier written to the Chairman of the Land Tribunal but also the endorsement given, by way of reply to that letter, by the Chairman, These were the materials that had weighed with the learned Magistrate to pass the impugned preliminary order and also the further consequential order appointing a receiver.

13. If these facts are viewed in the light of the observations of the Supreme Court in Bhutani's case, AIR 1968 SC. 1444, it cannot be said that the impugned orders do not satisfy the requirements of law. The principles enunciated in Bhutani's case, AIR 1968 SC. 1444, are required to be followed in preference to the decisions of this Court relied upon by the learned Counsel for the petitioners.

14. For the reasons mentioned above, I am of the view that the orders impugned herein do not call for any interference. Therefore, this petition is dismissed.