

(1991) 01 AHC CK 0032
In the Allahabad High Court
Case No : Criminal Revision No. 1462 of 1988

Narendra Pratap Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(5), 145(6), 146, 146(1)

Citation : (1991) CriLJ 1531

Hon'ble Judges : G.D. Dube, J

Bench : Single Bench

Advocate : H.N. Singh, for the Appellant; Kamal Krishna, V.C. Tripathi, S.N. Srivastava and V.K.S. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Dube, J.—This revision has been preferred against the judgment and order of Sub-Divisional Magistrate, Sadar, Jaunpur, refusing to implead the revisionist as a party.

2. The facts of this case are very brief. On an application of Jai Prakash (opposite party No. 10) and report of Station Officer, Police Station Buxa, district Jaunpur, the Magistrate had passed a preliminary order dated 3rd August, 1988. On 30-8-1988, the revisionist had moved an application for being impleaded as a party on the ground that he was owner and in possession over the property. He was away at Bombay and when the proceedings u/s 145 of the Code of Criminal Procedure (hereinafter referred to as the Code) were initiated. The learned Magistrate has dropped the proceedings on 13-9-1988 on the ground that there was no apprehension of breach of peace. He released the property in favour of opposite parties 2 to 9. The application of the revisionist for being impleaded was also rejected. It is worth mentioning that opposite party No. 10 had filed a revision against the order of the Magistrate before the Sessions Judge. It was rejected. The opposite party No. 10 has filed a writ petition challenging the orders of the Magistrate as well as the Sessions Judge passed in the revision.

3. The opposite party No. 10 has challenged the propriety and legality of the orders of the Magistrate as well as the Sessions Judge.

4. The opposite parties 2 to 9 had contested the impleadment application of the revisionist on the ground that he was not at all in possession and had no locus standi to become a party.

5. It was argued from the side of learned counsel for the revisionist that in Sub-section (5) of Section 145 of the Code, the learned Magistrate had jurisdiction to implead a person. The lower Court was only required to see that the person seeking impleadment was an interested person. Since the revisionist was saying that he was owner and in possession of the property, then it was sufficient to indicate that he was interested person. He had come to the Court at the earliest opportunity as soon as he came to know about the initiation of the proceedings.

6. Learned counsel for the opposite parties 2 to 9 urged that simply saying that the revisionist was owner and in possession was not sufficient. The proceedings under Sections 145 and 146 of the Code are of summary nature. They are intended to avoid breach of peace in respect of certain property in dispute between the two parties. The revisionist had not shown that there was any apprehension of breach of peace between him and the other two parties.

7. The matters involved in the writ petition are different. The point involved in this revision is not involved in the said writ petition. The matter in this case is confined only to this matter whether the revisionist had made out a case as to entitle him to be impleaded as a party, in view of Sub-section (5) of Section 145 of the Code which runs as under:--

"(5) Nothing in this section shall preclude any party so required to attend or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-section (1) shall be final."

8. The application moved by the revisionist did not indicate as to how he was in possession over the property in dispute. He simply stated that he was in possession over the property in dispute. There was a Kachcha house over the site. After this Kachcha construction fell down, he constructed a shop in which he had been carrying on business. It was urged that the opposite parties in collusion with the police are trying to take possession had got the property attached. This statement was very vague. No document was attached with the petition supporting the allegations regarding the existence of old house and construction of a new building on the site. On such a vague and general allegation, the learned Magistrate could not come to the conclusion that the revisionist was an interested party and should be impleaded.

9. The learned Magistrate has observed in the paragraph dealing with the application of the revisionist in his judgment that the revisionist was claiming

title which cannot be decided in the proceedings u/s 145, Cr.P.C. The copy of application, which is annexed with the affidavit filed by the revisionist, deals mainly with the title of the revisionist only. It was stated that he was sole owner in possession. I have already stated that this simple application without any corroborative evidence was not at all sufficient material before the Magistrate as to indicate that the revisionist was an interested person. The police too had not reported that the revisionist was an interested party. There was no inkling to indicate the interest of the revisionist. Consequently, there was not jurisdiction to implead the revisionist.

10. Learned counsel for the revisionist has cited Ganga Singh Vs. Mohd. Shah Khan and Others, In this case, an application had been moved by a person to be impleaded as party when the matter was pending before the Munsif for decision u/s 146(1) of the Code of Criminal Procedure, 1898 as the provision existed at the relevant time. The learned Munsif had forwarded the whole matter to the learned Magistrate who had made a reference to the Court of Munsif for disposal. The learned Magistrate had disposed the application and allowed the impleading of the said person who had moved an application before the Munsif. In this case, it was held by a single Judge of this Court (Hon"ble Hari Swarup, J.) that once the Magistrate gets information that some other person is also concerned in the dispute he can issue notice to him also to show cause because the purpose of Section 145 of the Code is the prevention of breach of peace by any person. The matter, in this case, is entirely different. The learned Magistrate dropped the proceedings holding that there was no apprehension of breach of peace between the parties which had been originally arrayed at the time of preliminary order. It was the satisfaction of the Magistrate as to whether there was any apprehension of breach of peace between the revisionist and the other two parties. The learned Magistrate had held that the revisionist was claiming title in the property. On examination of the record, I find that there was no jurisdictional error in the matter.

11. Learned counsel for opposite parties had cited Mahadeo Prasad v. Ram Saran AIR 1945 Oudh 12 : (1946 CriLJ 680). In this case, it was held that a person having no personal right to a disputed property need not be impleaded as a party to the proceedings.

12. My attention was also drawn by, learned counsel for opposite parties 2 to Bindhyachal Prasad Varma Vs. Madho Singh and Others, . In this case, the application had been moved by the concerned party for being impleaded after the learned Magistrate had decided the matter on 6th April, 1944. The application was moved for the first time on 18-10-1944 after the case had gone back to the learned Magistrate for issuing a formal order in Sub-section (6) of Section 145 of the Code. It was held that, in these circumstances, the learned Magistrate was justified in rejecting the application. This case is based on entirely different facts. Therefore, any ratio of this case is not applicable to the present matter.

13. No other point has been pressed.

14. For the reasons mentioned above, I find no force in this revision. It is, therefore, dismissed.