

(1969) 08 PAT CK 0007

In the Patna High Court

Case No : Criminal Revision No"s. 78 and 153 of 1969

Newa Lal Sharma and Others

APPELLANT

Vs

Bikku Sharma and Others

RESPONDENT

Date of Decision : 12-08-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145(1)

Citation : AIR 1970 Patna 386 : (1970) CriLJ 1575 : (1969) 2 PLJR 621

Hon'ble Judges : M.P. Verma, J

Bench : Single Bench

Advocate : G.P. Mishra, D.N. Tripathi and S.C. Tiwari, in No. 78 of 1969 and K.K. Sinha and Shyam Sunder Sinha "Shyam", in No. 153 of 1969, for the Appellant; Kailash Roy, J.N.P. Verma, Kanhaiya Prasad Verma and Kamlakant Prasad, for the Respondent

Final Decision : Allowed

Judgement

M.P. Verma, J.—Both these revision applications have been heard together, with the consent of the parties, as they arise out of the same order passed by the learned Magistrate in a proceeding u/s 145 of the Code of Criminal Procedure, and this judgment will govern them both.

2. Criminal Revision No. 78 of 1969 has been filed by the sole member of the third party and Criminal Revision No. 153 of 1969 has been filed by both the sets of the fourth party to the proceeding. First party Bikku Sharma and second party Bhumi Sharma are cousins inter se, being the grand-sons of two brothers Baburam and Dattu, and they had really got the proceedings started. As a matter of fact, there was no Police report in this case about any apprehension of a breach of the peace because of the dispute regarding possession of immovable property. No party had filed any petition before the Magistrate that there was an apprehension of a breach of the peace and a proceeding u/s 144 or 145 of the Code of Criminal Procedure should be started. The Sarpanch of the Gram Cutcherry, in agreement with the Mukhiya, with whom, perhaps, the first party

was on bad terms, filed a report before the learned Sub-divisional Magistrate that there was an apprehension of a breach of the peace between the two parties concerning some land, and so the learned Magistrate initiated a proceeding u/s 144 of the Code of Criminal Procedure (hereinafter referred to as "the Code"). That proceeding was started on the 21st February, 1966. The Sarpanch, in his report, stated that a partition suit, being suit No. 38 of 1965, was pending between the parties in the Court of the Subordinate Judge, Monghyr. On the 11th March, 1966, the first party filed a petition before the learned Magistrate requesting him to drop the proceeding u/s 144 and to start a proceeding u/s 107 of the Code against the second party. The learned Magistrate found that the grounds mentioned in the petition were not satisfactory and so he disallowed this prayer. On the 6th April, 1966, Newa Lal Sharma filed a petition before the Magistrate stating that portions of the disputed lands were in his possession and in possession of his nephew, Bachoo Sharma, and so he prayed to be added as a party to the proceeding. On the same day, Hirdi Sharma and Jantri Sharma filed a petition before the Magistrate for being added as parties on the ground that they were in possession of certain lands included in the subject-matter of the proceeding. The learned Magistrate, after hearing the parties, directed that the applicants be added as parties to the proceeding, and on the same day he passed the following order converting the proceeding u/s 144 into one u/s 145 of the Code.

"Heard learned Advocates of parties. There is a title suit going on between 1st and second parties for the lands. The other petitioners who have come today are also armed with documents. I am satisfied that there is a bona fide land dispute. It cannot be decided in summary proceedings u/s 144, Criminal Procedure Code. Proceedings converted to one u/s 145, Criminal Procedure Code and lands attached u/s 145(4) Criminal Procedure Code. Newalal Sharma and Bachoo Sharma be described as third party and Hirdi and Jantri as fourth party. Parties will file w/s documents and affidavits by 28-4-1966."

The case of the third and fourth parties was that they were in possession of certain portions of the disputed lands and they came to know of this proceeding when the Police had gone to the spot to harvest the standing paddy crops. Thereafter, they rushed to the Court of the Magistrate and applied before him to be added as parties to the proceeding. When the first and second parties found that the third and fourth parties were also claiming possession over a portion of the lands in dispute, they filed a compromise petition in the partition suit pending in the Court of Subordinate Judge, Monghyr on the 3rd November, 1966, partitioning the lands between themselves, and, on the same day, that is, the 3rd November, 1966, they filed a petition in the Court of the Magistrate also stating that the partition suit had been compromised and the lands had been partitioned according to the schedules given in the said petition. It is against the final orders passed in this proceeding u/s 345 of the Code that the third and fourth parties have come up to this Court.

3. Learned Counsel appearing on behalf of the third and fourth parties, the petitioners in the two revision applications, have made a common ground of attack against the impugned order of the learned Magistrate to the effect that he has not followed the mandatory provisions as contained in Section 145(1) of the Code. According to them, the Magistrate had no jurisdiction over the subject matter of dispute because there was no apprehension of a breach of the peace. The order of the learned Magistrate, dated the 6th April, 1966, converting the proceeding u/s 144 to one u/s 145 of the Code, already quoted, obviously does not indicate that the Magistrate initiated the proceeding u/s 145 of the Code because there existed a dispute likely to cause a breach of the peace concerning any land. A number of decisions have been cited before me, most of which were discussed and considered by me in the case of Sukhdeo Singh v. Prabhawati Devi, Criminal Revn. No. 623 of 1967, D/- 14-11-1968 (Pat). Apart from those decisions, which have been discussed in that judgment, my attention was drawn to a recent case of the Supreme Court, R.H. Bhutani Vs. Miss Man J. Desai and Others, . If I may say so, I may summarise the decisions of Various Courts in the following words:--

(i) If a competent Magistrate has mentioned in his order that there was an apprehension of a breach of the peace because of some dispute concerning immovable property, the sufficiency of the grounds cannot be challenged in higher courts. The Magistrate is concerned with the peace within the local limits of his jurisdiction, and if he is satisfied, on the materials before him, the sufficiency or otherwise of those materials should not be gone into, because the matter is of subjective satisfaction of the Magistrate.

(ii) If the Magistrate has not mentioned in his order that he is satisfied from a police- report or other information that a dispute likely to cause a breach of the peace exists concerning any land etc., a question arises whether there should be any further inquiry, or the sole ground of non-mention of the reason of his satisfaction should be sufficient to set aside his order concerning that proceeding.

The trend of decisions in this matter is that a revisional Court can look for itself whether the materials present before the Magistrate necessarily led to the conclusion that in fact, there was an apprehension of a breach of the peace. If those materials were present before the Magistrate, he would be deemed to have considered those materials and then passed the order; and it does not matter whether or not in the order itself he had mentioned that he was satisfied about an apprehension of a breach of the peace. In a number of cases cited before me there was mention in the order of the Magistrate that he was satisfied that there was an apprehension of a breach of the peace, and the question of sufficiency of his satisfaction was challenged before the higher Courts, and naturally those contentions were not accepted. On the other hand, if the record shows that there was no material before the Magistrate from which he could conclude that there was a likelihood of a breach of the peace, his order cannot be sustained.

4. In the instant case, there was no petition by any party that there was any likelihood of a breach of the peace. The third party in his petition stated that, as his lands also had been included in the proceeding, he should be added as a party. In the petition of the members of the fourth party filed on the 6th April, 1966, which was to be treated as their show cause, it was stated that they came to know of the proceeding when the Police were harvesting the crops raised by them and so they wanted to be added as parties. Even in the written statement filed, on behalf of the first party, the report of the Sarpanch, on the basis of which the proceeding u/s 144 of the Code had been started, was branded as collusive and false. So prima facie, there was nothing on the record to show that there were materials before the Magistrate justifying him to take the view that there was an apprehension of a breach, of the peace.

5. Learned counsel for the first party has argued that, when the members of the third and fourth parties appeared before the Magistrate and contended that their lands also had been included in the proceeding, it could legitimately be inferred that there was an apprehension of a breach of the peace. In my opinion, such inference may not be justified. Any of the parties can stress his claim before the Court, and this happens in a civil suit also. But that does not show that there is always an apprehension of a breach of the peace. There must be something more to indicate that the parties were acting in such a manner as was likely to cause a breach of the peace. What was working in the mind of the Magistrate in the instant case is difficult to presume, because he has not expressed his mental thoughts. But, on the facts of this case, it can be noticed that there were no materials before the Magistrate so as to justify an action u/s 145 of the Code. Of course, there was dispute concerning lands, but that by itself would not give jurisdiction to the Criminal Court to decide the matter. Disputes regarding immovable property are the subject-matter of Civil Courts; but if there is an apprehension of a breach of the peace, that apprehension gives jurisdiction to the Criminal Court to decide the question of possession. Both parties have referred to the decision of the Supreme Court mentioned above, *R.H. Bhutani Vs. Miss Man J. Desai and Others*, . The whole thing has been explained in this judgment. In that case their Lordships observed as follows:

"The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable, property exists and that such dispute is likely to cause breach of peace."

In other words, the Magistrate, before initiating the proceeding, must be satisfied that a dispute regarding an immovable property exists and that that dispute is likely to cause a breach of the peace, and he must record both these reasons in his order. In the instant case, the order of the Magistrate simply shows that he was "satisfied that there is a bona fide land dispute", whereas in the above mentioned case the order of the Magistrate showed that he was satisfied that there was a dispute which was likely to cause a breach of the peace. In that view of the matter, no further inquiry was needed. It was found as a fact that, apart

from the petition which the party had filed concerning possession and dispute over, the cabin, the petitioner had also been examined on solemn affirmation by the Magistrate. Their Lordships held that, in those circumstances, the Magistrate could rightly come to the conclusion that there was likelihood of a breach of the peace and when once he had so recorded in the order, the sufficiency or otherwise of the grounds of such belief could not be questioned. In that view of the matter, the above reported case does not help any of the parties. On the principles laid down in that case, at best it can be said that when there is no mention in the order that there was a dispute regarding immovable property and also that such a dispute was likely to cause a breach of the peace, the order could not be upheld. But once it is mentioned in the order that there was likelihood of a breach of the peace, the grounds on which the Magistrate relied could not be challenged and criticised as being insufficient. So, in the light of the discussions made above, I come to the conclusion that in the instant case, as there was no mention in the order that the so-called bona fide land dispute was likely to cause a breach of the peace, the materials before the Magistrate did not justify him to take action u/s 145 of the Code.

6. It was stated on behalf of the petitioners that a title suit is pending between the first and second parties in which all these lands are included. It is said on behalf of the first party that that title suit has been compromised. But no document concerning that suit has been filed in these cases and the allegations made in the revision applications have not been controverted at all. Any way, if the title suit is still pending, it would be better if the third and fourth parties are also added there as parties and the matter be decided in their presence. If, on the other hand, the title suit has been compromised, as stated, then a fresh proceeding u/s 145 of the Code may be started, if the apprehension of a breach of the peace still continues. But only on the ground that it will prolong the litigation between the parties, I do not think that this defective order should be upheld. Not to insist on the strict compliance with the mandatory provisions of Section 145(1) of the Code, in my judgment, would be to encourage loose thinking on the part of the magistracy. When the provisions are mandatory, the Magistrate must follow them scrupulously and to the letter so that his order is not made vulnerable because of his failure to follow the mandatory provisions of the law.

7. I do not want to enter into the merits of this case, because the revision applications are being disposed of on preliminary point of jurisdiction. It has been argued that the learned Magistrate has misconstrued the report of the pleader-commissioner. He has accepted one part of the report and has discarded the other part. Any way, this may come up for discussion in any subsequent proceeding, if perchance there be any such proceeding. I hope the parties would be well advised not to create any breach of the peace and should take the matter to the Civil Court.

8. In the result, the two revision applications are allowed and the impugned order of the learned Magistrate is set aside. The lands will now be released from

attachment.