
(2008) 09 AHC CK 0110
In the Allahabad High Court

Panna Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 397

Citation : (2008) 3 UPLBEC 2263

Hon'ble Judges : A.K. Roopanwal, J

Bench : Single Bench

Judgement

A.K. Roopanwal, J.—This criminal revision has been filed against the orders dated 10.1.03 passed by the City Magistrate, Mathura under Sections 145(1) and 146(1), Cr.P.C.

2. It appears from the record that on the report of S.O. Sadar Bazar, Mathura dated 10.1.03 that there was a dispute between the parties over plot Nos. 104 to 140, in all 21 plots, situate in village Mursadpur, Tahsil Sadar, District Mathura and that there was likelihood of breach of peace the City Magistrate, Mathura passed the preliminary order u/s 145(1), Cr.P.C. on 10.1.03 and called upon the parties to appear on 24.1.03 and file the proof of their possession over the disputed land. Subsequently, in order to maintain peace between the parties the same Magistrate ordered for the attachment of the property on the same day dated 10.1.03.

3. Heard Mr. Anupam Kulshreshtha, learned Counsel for the revisionists, Mr. Krishan Ji Khare for the opposite parties and perused the record.

4. Mr. Kulshreshtha argued that the revisionists are in the possession of the disputed plots and therefore, the Magistrate had no jurisdiction at all to take action u/s 145 or 146, Cr.P.C. It was also argued that regarding the property in dispute civil case is also pending between the parties and that also barred the jurisdiction of the Magistrate concerned.

5. To the above argument Mr. Khare argued that the orders impugned in this

revision are interlocutory orders against which no revision is permissible.

6. It cannot be disputed that where an order is wholly without jurisdiction, it is a nullity and non-est with the result that any proceeding drawn subsequent thereto will become void ab initio and if such order is set aside it has the effect of wiping out the whole proceedings. In relation to such an order bar of Section 397(2), Cr.P.C. can not be applied merely on the ground that the said order was passed at the initial or intermediate stage of the proceedings. It will not be correct to say that bar of Section 397(2) will apply to all orders excepting the final orders by which proceedings are culminated. The expression "interlocutory orders" has been used in Section 397(2) Cr.P.C. in a restricted sense only. To lay down that all orders other than Final orders disposing of proceedings will fall within the sweep of the expression "interlocutory orders" will not be a correct proposition. "Interlocutory order" as envisaged in Section 397(2) denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the rights of the parties even if made during the pendency of lis is not an interlocutory order.

7. Therefore, where it is shown that on admitted facts the Magistrate could not assume jurisdiction to initiate proceedings u/s 145, Cr.P.C. the bar of Section 397(2) can not be pressed into service, as in such a situation orders made under Sections 145(1) and 146, Cr.P.C. will be null and void having no sanctity in law and if they are set aside they will have the effect of culminating the proceedings as void ab initio.

8. Now, it would be seen as to whether in the present case the Magistrate could exercise the jurisdiction for initiating the proceedings u/s 145 and 146, Cr.P.C. in relation to the plots in question.

9. For initiating the proceedings u/s 145, Cr.P.C. two things are to be satisfied. Firstly, that there is a dispute between the parties in relation to possession of an immovable property and secondly, that the said dispute is likely to lead to a breach of peace. Both these conditions must co-exist. Now it is to be seen as to whether in the present case the aforesaid conditions existed for the exercise of the jurisdiction to initiate the proceedings by the concerned Magistrate.

10. It appears from the record that one Dalla Ram was the original recorded tenure holder of the disputed land in 1340 fasli. His name continued to be recorded up to 1360 fasli. In 1360 fasli revisionist No. 1 came into possession. Dalla Ram had executed a Will in favour of the nephew of Panna Lal namely Bhagwan Das, however, this Will did not see the light of the day as Bhagwan Das had died in the life time of Dalla Ram. Dalla Ram became blind before the year 1968. On 20.9.1969 one Jamuna Das s/o Neta executed a sale deed without any authority in favour of Ashok Kumar, minor son of Narayan Das and Murari Lal, minor son of Sri Nath. This Jamuna Das had got his name entered in the revenue records taking the advantage of the blindness of Dalla Ram. Later on, names of Ashok Kumar and Murari Lal were recorded in the revenue records without any

authority. Neither Jamuna Das nor Ashok Kumar nor Murari Lal ever paid the land revenue or the irrigation charges. In the year 1973 Ashok Kumar and Murari Lal in collusion with some bad elements tried to interfere in the possession of revisionist No. 1, then he came to know about the forged entries in the revenue records about the names of Jamuna Das, Ashok Kumar and Murari Lal. He then filed a suit for correction of entries which was ultimately decided to the effect that the revisionist Panna Lal should file a suit for declaration. On 15.11.83 a notice was sent by Ashok Kumar and Murari Lal to the revisionist Panna Lal through his Counsel Niranjana Prasad Agrawal that Panna Lal (revisionist No. 1) is in possession as a trespasser over the land in dispute. It was said in the notice that this possession was taken forcibly in June 1983. Thus, from the notice it is clear that the revisionist No. 1 was admitted to be in possession of the land in dispute. Not only this, the mother of Ashok Kumar namely Smt. Sakhi Devi along with Murari Lal filed a suit u/s 209 of the U.P.Z.A. & L.R. Act against the revisionist Panna Lal on 28.5.84 and this also shows the possession of the revisionist over the land in dispute. The opposite parties have not been able to deny that the suit for dispossession of Panna Lal (revisionist) u/s 209 of the U.P.Z.A. & L.R. Act was filed by Smt. Sakhi Devi and Murari Lal, their predecessors. There is no proof that the revisionist Panna Lal was ever evicted from the disputed land and as such the possession of Panna Lal is established on the land in dispute and thus, there could be no occasion for the Magistrate to decide the possession of the parties on the date of preliminary order or two months before the order. The Magistrate, therefore, completely lacked inherent jurisdiction to initiate proceedings.

11. There is one more ground on which the proceedings should not have been initiated. It is on the record that a civil suit No. 233/02 was filed on 20.9.02 by the revisionist Panna Lal against O.P. No. 3 for cancellation of sale deed alleged to have been executed by Banwari Lal in favour of O.P. No. 3 and two other persons. In that suit an application for injunction was filed and the Civil Judge (SD), Mathura vide his order dated 23.12.02 ordered the parties to maintain the status quo. While passing that order the trial court was of the opinion that the revisionist No. 1 is in possession of the property since a long. That order of the Civil Judge was, however, stayed by the Sessions Judge but even then this observation of the Civil Judge remained intact that the revisionist Panna Lal is in possession. Therefore, in view of the fact that a civil suit was pending between the parties and the possession of the revisionist No. 1 was prima facie established from the record, there could be no occasion to initiate the proceedings by the SDM concerned.

12. Thus, in view of the above I do feel that the proceedings were not proper as the Magistrate had complete lack of jurisdiction to initiate the proceedings and that being the position the revision cannot be challenged on the ground that the impugned orders are interlocutory orders.

13. In the result, this revision is allowed and the orders dated 10.1.03 passed

under Sections 145 and 146, Cr.P.C. are, hereby, set aside.