
(1994) 08 RAJ CK 0005

In the Rajasthan High Court

Case No : Cr. Miscellaneous Petition No. 670 of 1993

Pema Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-08-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 145(3), 145(4), 482
Penal Code, 1860 (IPC) — Section 302, 326

Citation : (1995) CriLJ 1293 : (1995) 2 RLW 91 : (1995) 3 WLC 294

Hon'ble Judges : N.C. Kochhar, J

Bench : Single Bench

Advocate : N.C. Chaudhary, for the Appellant; K.A. Khan, Public Prosecutor and V.S. Poonia, (for Nos. 2 and 6), for the Respondent

Final Decision : Allowed

Judgement

N.C. Kochhar, J.—The facts giving rise to this petition u/s 482 of the Code of Criminal Procedure (the Code) against the order dated 15-6-1993 passed by the learned Executive Magistrate, Dudu District - Jaipur in Criminal Case No. 6/91, are as under:-

2. A report dated 19-12-1991 was received by the learned Executive Magistrate, Dudu from the police that there was likelihood of breach of peace as there was dispute regarding the possession of the land in dispute measuring 302 bighas and 8 biswas situated in village Kanwa Kalan Tehsil - Dudu District - Jaipur. On receipt of this report, an order under Sub-section (1) of Section 145 of the Code was passed by the learned Executive Magistrate on 7-1-1992 and a preliminary order for attachment of the land in dispute was also passed and the Tehsildar was appointed as the receiver. After the parties submitted their written statements in regard to the possession of the land in dispute, the learned Executive Magistrate, vide the impugned order dated 15-6-1993 has observed that he is unable to decide as to which party was in possession of the land in dispute at the relevant time and directed that the receiver should continue in

possession of the land in dispute till the matter is decided by the appropriate Court. Feeling aggrieved, the petitioners have approached this Court by filing this petition.

3. Notice of the petition was issued to the respondents.

4. I have heard the learned counsel for the parties and have also perused the impugned order and the record of the case.

5. In the impugned order itself it has been mentioned that the trouble started on 3-10-1991 when the petitioners wanted to reap the crops of "bajara", "jwaar" and "til" sown by them and the respondents (other than the State) were agitating that they had no right to have grown the crops there on and to reap as the land in dispute was meant for being used as grazing land only and although the Khatedari rights had been got recorded by the petitioners, it had been agreed that the land would be used only for grazing purposes. The impugned order further shows that on 13-10-1991, some occurrence took place in which one person died and others received grievous injuries and cross cases were registered u/s 302 and 326 IPC at the police station concerned. The report, therefore, shows that although the dispute did exist in regard to the possession of the land, but the impugned order further shows that the dispute was in regard to sowing of the crops above" said by the petitioner and their right to reap the same. Once it is not disputed that the- crops had been sown by the petitioners in the land in dispute and the crops were ready for reaping on 13-10-1991 it is apparent that it must have taken more than two months for being reaped after the date when the seeds were sown by the petitioners in the land in dispute. The relevant provisions of Section 145 of the Code may be reproduced with advantage for deciding as to whether the learned Executive Magistrate had the power to proceed with the matter under that section and to attach the land in dispute and the said relevant provisions are as under:-

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.- (1) Wherever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of peace exists concerning any land or water of the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements-of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) to (3).... .

(4) The Magistrate shall then, without reference to the merits of the claims of any of the parties to a right to possess the subject of dispute, peruse the statement so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of

the order made by him under Sub-section (1), in possession of the subject of dispute.

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under Sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1).

(5)

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in Sub-section (3).

(7), (8), (9) and (10).....

6. Bare reading of the above said provisions shows that the only scope of the enquiry by the learned Executive Magistrate is to find out as to which of the parties was in possession of the land in dispute at the relevant date or if any one of them had been forcibly and wrongfully dispossessed within the period of two months next before the date on which the report of the police officer or information had been received by the Executive Magistrate. Even if it be assumed that report dated 19-12-1991 was received by the learned Executive Magistrate on the same date, the scope of his enquiry was to find out as to which of the parties had been in possession of the land in dispute on 7-1-1992 when the order under Sub-section (1) of Section 145 of the Code had been passed or to determine if the party so found in possession on 7-1-1992 had come in possession by forcibly and wrongfully dispossessing the other party from the land in dispute within the period of two months prior to 19-12-91.

7. As noted above, the crops admittedly must have taken more than two months for being ready to be reaped from the date that the seeds were sown by the petitioners in the land in dispute. Even if it be taken that the petitioners came in possession of the land in dispute on the date that they had sown the seeds therein they were in possession there of more than two months when the dispute about reaping of the crops took place on 13-10-1991. The report dated 19-12-1991 even if had been received by the learned Executive Magistrate on the same date, the facts clearly show that the petitioners were in possession of the land in dispute for a period of more than two months next before

19-12-1991. In view of this material shown in the report itself, the learned Executive Magistrate could not have exercised jurisdiction of initiating proceedings u/s 145 of the Code and could not have passed any preliminary order of attachment and all those proceedings are without jurisdiction. Even otherwise, in view of the above said material available in the report on the basis of which the jurisdiction was exercised by the learned Executive Magistrate, the observation of the learned Executive Magistrate that he was unable to decide as to which party was in possession of the land in dispute is nothing but perversity. For all the above said reasons, the impugned order cannot be allowed to stand and is liable to be quashed.

8. Consequently, this petition is accepted, the impugned order is set aside and it is directed that the petitioners, who have been in possession of the land in dispute since before 13-10-1991, should be put in possession of the land in dispute and their possession should be protected till a Court of competent jurisdiction decides to dispossess them in accordance with law. The petition stands disposed of accordingly.