
(1954) 08 AP CK 0026

In the Andhra Pradesh High Court

Case No : Criminal Revision No. 605 of 1954 and Cri. Revision Petition No. 565 of 1954

Prakasa Reddi and Others

APPELLANT

Vs

Jonnala Pitchareddi and Another

RESPONDENT

Date of Decision : 27-08-1954

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 110, 145, 423(1), 439

Citation : AIR 1955 AP 55 : (1955) CriLJ 565

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Advocate : P. Basi Reddy, P.P, for the Appellant; A.V. Krishna Rao, K. Narasimha Rso and G.T. Raghavayya, for the Respondent

Judgement

(1) This is an off-shoot of an order passed by Mr. Justice Somasundaram of the Madras High court on 5-5-1954 in Criminal Revision Case No. 442 of 1953. In order to appreciate the respective contentions of the parties, it is useful to trace the background of this litigation.

The first respondent purchased properties including those invoked in this Revision case under three registered sale deeds of the year 1952, and obtained possession thereof from the vendors. In November 1952, he moved the Additional Sub Magistrate, Guntur, under S. 144, Criminal P. C., for an order preventing the petitioners herein from trespassing on his lands with allegations that while he was away at Madras the present petitioners trespassed on his land on 9-11-1952, and cut away the crops on a portion of the land and that they were attempting to remove the crops on the remaining portion of the land and prevent him from harvesting the crops belonging to him.

On 20-4-1954, orders were passed under S. 144(1) restraining the present petitioners from interfering with the possession of the land of the first respondent, Meanwhile, proceedings under S. 145, Criminal P. c. was initiated before the Additional First Class Magistrate, Guntur, who passed a preliminary

order in December 1952. It may be stated that the order under S. 144(1) was vacated. After hearing the parties and receiving the evidence adduced by them and considering the effect of the evidence, the Magistrate passed an order declaring the possession of the first respondent herein, but in the last paragraph of the order, the learned Magistrate observed as follows:

"I am not concerned with the possession of the land prior to 1951. I am concerned with the possession of the land on 9-12-1952 (i.e., the date of the order under S. 145(1), Criminal P. C.) or within two months next before 9-12-1952".

The present petitioners carried the matter in revision to the High Court and when it came up before Justice Somasundaram, the learned Judge remarked that the last sentence quoted above was unintelligible. It is useful to extract that part of the order of the learned Judge which has given rise to this Revision Petition:

"The latter part of the sentence I am unable to understand unless the two months" period is to be taken into consideration in connection with dispossession. Whether the petitioner in the lower court was dispossessed within that period prior to 9-12-1952, it is not quite clear. Obviously, the Magistrate had in his mind the allegation in the petition of that statement in the police report, that the respondents in the lower court trespassed on the land on 9-11-1952 and continued to be in possession up to the date of the preliminary order. In that case, the proper finding should have been that the respondents dispossessed the petitioner in the lower court on 9-11-1952, which was within two months prior to 9-12-1952, and therefore, the petitioner in the lower court should be declared to be in possession and the respondents should be asked to deliver possession of the property. But the order does not make it quite clear. It is therefore necessary to set aside this order. I direct the case to be reheard by the same Magistrate or some other Magistrate to be appointed by the District Magistrate who should give a definite and distinct finding as to whether the petitioner in the lower court was dispossessed on 9-11-1952, or whether he was not dispossessed at all. If he was not dispossessed and continued to be in possession then there should be a finding that not only on 9-12-1952, but also prior to it he was in possession".

(2) When the matter went back to the Magistrate, it was contended on behalf of the present petitioners that the learned Judge ordered a *denovo* enquiry and therefore the Magistrate should begin the inquiry under S. 145, Criminal P. C., afresh. On the other hand, it is urged on behalf of the present 1st respondent that the direction of the learned Judge was only to re-hear the arguments and to re-write the judgment. This argument advanced on behalf of the 1st respondent found favour with the Magistrate who expressed the opinion that the order of Justice Somasundaram meant only re-hearing of arguments on the evidence already on record and there was no necessity to allow the parties to adduce evidence afresh. It is this order of the Magistrate that is under revision. The same contentions as in the lower Court are repeated before me in this Revision Petition.

(3) The first question, therefore, that arises for consideration is as to the powers of the High Court in exercise of its jurisdiction under s. 439 to order a rehearing or a further enquiry. While it is contended by Mr. Basi Reddy, the learned Counsel for the petitioner, that the powers of the High Court in regard to re-hearing or an enquiry aresh are unfettered, the position taken by Raghavayya, counsel for the 1st respondent is that the High court hasno power at all to remit the matter to the lower Court for any purpose and if any such power existed it could only be to direct a re-hearing of the arguments based on the evidence already recorded and to re-write the order. I will now proceed to consider which of the two views is correct.

(4) Under S. 439, Criminal P. C., the High Court in its discretion could exercise any of the powers conferred o a Court of appeal by Ss. 423, 426, 427 or on a Court by S. 338. Here we are only concerned with S. 432(1), Criminal P. C., Clause (a) and (b) to S. 423(1) relate to appeal from orders of acquittal or from conviction. We are therefore (not?) concerned with these two clause in this enquiry. The relevant clause are (c) and (d) which are in the following terms:

"(c) in an appeal from any other order, alter or reverse such order:

(d) make any amendment or any consequential or incidental order that may be just or proper."

According to Mr. Raghavayya, combined reading of these two clause does not confer power on the High Court firstly to send back the matter to the trial Court or, at any rate, to direct a fresh equity. The learned counsel contends that cl. (d) does not enlarge the powers conferred by Cl. (c) and it merely enables the High Court to pass incidental orders such as a direction as to concellation of bail-bonds when an appellant is directed to be set at liberty or when the sentence of fine is set aside, ordering a refund of the fine if already paid. I do not think it is possible to give such a restricted meaning to Cl. (d).

(5) Mr. Raghavayya based his arguments on some decided cases. In -- "Dayanath Talukdar v. Emperopr", 33 Cal 8 (A), a Bench of the Calcutta High Court ruled that there was no power in a District Magistrate sitting as an appellate Court and hearing the appeal against an order under S. 110, Criminal P. C., to order further enquiry after setting aside the order of the lower Court. It may be mentioned that beyond merelymaking the statement there is no discussion at all in the case nor is a reference ot S. 423(1) (c) or (d) made. Therefore, this ruling cannot be relied on as an authority for the proposition put forward by Raghavayya.

In -- "Mehi Singh v. Mangal Khandu", 39 Cal 157 (FB) (B), a Full Bench of the Calcutta High Court expressed the opinion that an appellate Court had no power to order compensation under S. 250, Criminal P. C. The learned Judge stated that consequential or incidental orders must fall under one or other of two heads, which were mentioned in the judgment. It may be mentioned that Chief Justice Jenkins did not sign the judgment as the reasoning of the Judges did not appeal

to him. This case also came in for considerable criticism at the hands of the Rangoon High Court in -- "Ma Mya Khin v. Maung Pohtwa", AIR 1933 Rang 268 (FB) (C).

The question there was whether an order under S. 148(3), Criminal P. C., was one incidental to an order for possession under S. 145. In that context the Full Bench ruling of the Calcutta High Court referred to above was noticed and Chief Justice Page who delivered the leading judgment remarked that he was unable to appreciate the reasoning upon which that part of the judgment was based.

Agreeing with the learned Judges of the Rangoon High Court in -- "Ma Mya Khin v. Po Htwa (C)" and with great respect to the majority of the Judges in -- "Mehi Singh v. Mangal Khandu (B)", I find it difficult to appreciate the reasoning of the learned Judge to hold that the order awarding compensation is not either a consequential or incidental order within the meaning of s. 423(1) (d). Be that as it may, I do not think that that ruling can be of any assistance to the determination of the question before us.

(6) There are two rulings, one of Lahore and another of Oudh, which bear out the proposition of Mr. Raghavayya. In -- AIR 1942 416 (Oudh) , Bennet, J., rules that since the principle of *autrefois acquit* is not applicable to proceedings under S. 107, Criminal P. C., it was not competent to an appellate Court to order a re-trial after setting aside an order under S. 107, Criminal P. C. The learned Judge though that as S. 403, Criminal P. C., does not bar the initiation of fresh proceedings under s. 107, Criminal P. c., S. 423(1)(d) should not be regarded as having conferred power on the appellate Court to order re-trial in such proceedings.

I must express my respectful disagreement with this view of the learned Judges. It may be that the principles underlying S. 403 are not applicable to proceedings like those under Ss. 145, 107, 110 and therefore there is no bar to the institution of fresh proceedings. If that is the sole criterion, in several instances, no useful purpose is served by carrying the matter in revision to the High Court. If the proceedings are to be initiated once again, it will involve the parties in considerable expense and time and it will be waste of judicial time. It should not be thought that the Legislature was unaware of all this.

Further, the interpretation placed by the learned Judge ignores Cl. (d) and gives effect only to Cl. (c). If the power of the High Court is only to set aside the order, that would only be in exercise of the power under Cl. (c) and does not give any meaning to Cl. (d), and renders the latter clause nugatory. It is the well-established canon of interpretation of a statute that effect should be given to every part of the statute. If the argument of the learned Judge is to be accepted, no meaning is given to Cl. (d). I do not think the intendment of this clause is the one indicated by Mr. Raghavayya.

(7) Reliance was also placed by Mr. Raghavayya on the decision of a single Judge of the Lahore High Court in - "Chandan v. Emperor" ,AIR 1929 Lah 28 (1) (E),

where the opinion was expressed by a single Bench of that Court that under S. 423(1)(c) there is no power conferred on an appellate Court to order re-trial or re-hearing of proceedings except in a case where an order of acquittal or conviction is set aside within the meaning of Cls. (a) and (b) to S. 423(1). Apart from this case having been overruled by a Bench of the same Court, my criticism with reference to -- "Abdulla Sheik v. Emperor (D)" applied equally to this case.

(8) My view that the powers conferred by S. 423(1)(c) and (d) are wide and enable the High Court to remit the matter to the lower Court gains support from decided cases. In -- "In re Nagappa Reddy", AIR 1934 Mad 202 (1) (F), Burn J., held that under S. 423(1) (c) and (d), an appellate Court has power to send back the matter to the trial Court. I am only referring to this case for the purpose of saying that the power to send back the matter to the trial Court for whatever purpose it may be exists in the Court. In fact, this decision is relied on by Mr. Raghavayya, for other purposes and I will refer to it presently.

(9) In -- "Bhuban Chandra v. Nibraran Chandra" AIR 1922 Cal 382 (1) (G), a Bench of the Calcutta High Court which was dissatisfied with the stereo-typed order of the Magistrate that he had heard the learned pleaders and considered oral and documentary evidence in the light of arguments addressed to the court, set aside the final order made by the Magistrate and directed that the case be re-opened at the point reached on the date on which the judgment was delivered and that after hearing the parties afresh and after recording the statement of reasons for his decision, the Magistrate will dispose of the matter in accordance with law. I will have to refer to it again in another connection. In -- Peria Subba Goundan Vs. Sinna Subbayya Goundan and Another, (H), where a Magistrate who held an enquiry under S. 145 declared that one of the parties was entitled to possession until evicted in due course of law observing:

"The 7th counter petitioner is declared to be put in possession of the land described hereunder. Fill up the schedule accordingly."

Justice Venkata Subba Rao set aside that order and directed the Magistrate to re-hear the parties after recording a statement of reason for his decision and dispose of the matter in accordance with law. These three decisions are relied on by Mr. Raghavayya for his propositions that at any rate the High Court has got only limited powers in ordering a re-hearing of the petition under S. 145, Criminal P. C. I have referred to these rulings only for a limited purpose, namely that the High Court has power in the exercise of its revisional jurisdiction to send back the matter to the lower Court after setting aside an order.

(10) There are "two Bench decision of the Lahore and Allahabad High Courts -- "Subeg Singh v. Emperor", AIR 1942 Lah 84 (I) and -- Bhagwat Singh and Others Vs. Emperor, , which have construed these two clauses i.e., Cls. (c) and (d) to S. 423(1). The view taken in both these cases is that the High Court in its revisional jurisdiction under S. 439, Criminal P. C., has ample powers to order a de novo enquiry after setting aside the order passed under Ss. 107 and 110,

Criminal P. C. Although the learned Judges were not dealing with a case arising under S. 145, the principle is the same. I must express my respectful accord with the view taken by the learned Judges though I am unable to appreciate a part of the reasoning therein which is based on the principle *autrefois acquit*. My conclusion reached on a consideration of the relevant provision of S. 423 and the decided cases is that Cls. (c) and (d) are of wide import and include a power to remit the matter to the lower Court after setting aside the order passed either under S. 107 or S. 110 or S. 145, Criminal P. C.

(11) This leads me to the point whether the power is of a limited nature as observed by Burn J., in-- "*Nagappa Reddy In re (F)*". With great respect to the learned Judge, I am unable to agree with the opinion expressed by him. For one thing, there is no discussion at all on this question. The learned Judge merely observed that the appellate Court should not order a *de novo* enquiry. No reason is given in support of this conclusion. According to him, all that the appellate Court could do is to direct the Magistrate to re-hear the parties and write a proper order in the light of the observations of the learned Sessions Judge. With respect. I fail to see how this restricted power could be inferred from the provisions of Cls. (c) and (d) to S. 423(f). Either there is a power in the High Court to send back the matter to the trial Court or no power. If a power exists to send it back to the trial Court. what is the basis for reading a restriction into the language of Cls. (c) and (d) ?

(12) In fact except this decision, no other ruling has been brought to my notice which has taken the view that the High Court has a limited power in sending back the matter after setting aside an order the provisions of S. 107 and proceedings of allied nature or under S. 145. Neither -- "*Bhuban Chandra v. Nibaran Chandra (G)*" nor -- "*Subba Goundan P. v. S. Subba Goundan (H)*" lends any colour to the argument of Mr. Raghavayya on this aspect of the matter nor support the view of Justice Burn. The learned Judges in either of the two cases have not expressed the opinion that the powers of the High Court are limited in the manner indicated by Justice Burn.

(13) In the circumstances of cases before them they indicated the procedure to be followed by the Magistrate. In fact, the expression "re-open" in -- "*Bhuban Chandra v. Nibaran Chandra (G)*" and "re-hear the parties" in -- "*Subba Goundan, P. v. S. Subbayya Goundan (H)*", are significant. In my opinion they point to the conclusion that the powers under S. 439 which are co-extensive with those in S. 423(1) (c) and (d) are wide enough to include the order of a further enquiry.

(14) In -- In Re: N. Sakkarai Kannu Pillai, (K), Somasundaram J. while considering the powers of a Court under S. 520, Criminal P. C., stated that he could only pass an order either modifying or altering or annulling the order passed under S. 517 and make further orders that may be just which include the confirmation of the order also, because it has not all the powers given to a Court of appeal under S. 423, Criminal P. C. No doubt, the jurisdiction of the appellate

Court under S. 423(1)(c) and (d) is not defined by the learned Judge and those observations only indicate that the powers under Cls. (c) and (d) of S. 423(1) are so wide powers that the learned Judge could have given the directions which have given rise to this Criminal Revision Case.

(15) The hollowness of the contention as to the limited nature of the powers conferred on the High Court by S. 423(1) will be exposed if we bear in mind a case where a Magistrate under S. 145, Criminal P. C., passed an order on receiving statements, but without giving opportunities to the parties to let in evidence. Suppose this matter is made the subject of a revision case and the High Court sets it aside as it does not conform to the procedure prescribed under S. 145, Criminal P. C. If I have to accept the contention of Mr. Raghavayya the High Court after setting aside the order is left helpless to direct the Magistrate to hold a further inquiry. No useful purpose will be served by this Court directing the Magistrate to re-hear the arguments and re-write the order as neither side has let in any evidence, and no satisfactory conclusion can be reached as to the possession of either party. I do not think that such anomalous position would have been contemplated by the Legislature.

(16) In fact such a case arose for consideration before Justice Lakshmana Rao in -- "Bogam Pedda Giddashe v. Bogum Achigadu", 40 CLJ 32 (L), where one side had no opportunity of letting in evidence in support of the claim that he was in possession of the property. The learned Judge after setting aside the order of the Magistrate under S. 145 ordered the Magistrate to enquire again into the case after giving the petitioners an opportunity to file a statement. No doubt, there is no discussion of the powers of the appellate Court to do, it, but that could only be on the assumption that a power to do the thing done by the learned Judge did exist in the High Court under S. 439, Criminal P. C. To hold otherwise would lead to results not contemplated by the Legislature.

(17) I should now proceed to consider the scope of the order of the learned Judge. On the one hand, it is urged by Mr. Basi Reddi that the intendment of the order was that there should be an enquiry afresh, while Mr. Raghavayya submits that the learned Judge would have only intended that the Magistrate should re-write the order and nothing more than that. I am afraid both sides have taken an extreme position. It looks to me that the Judge wanted that parties should have opportunity to let in any evidence which the parties might want so as to clear up the position as to whether it was a case of possession that was put forward by the 1st respondent herein or one of dispossession. If all that was meant, by the Judge was, re-writing the order, he would not have directed a re-hearing of the same. At the same time, it is difficult to think that he had ordered a de novo enquiry as urged for the petitioner. He would not have intended that all the evidence taken on earlier occasion should be wiped out, thus rendering the time and expense of the parties useless. On a careful reading of the order my conclusion is that the learned Judge wanted the Magistrate to re-hear the case in the sense that he could allow the parties to let in further evidence and decide the

question of possession or dispossession on a consideration of the whole evidence including that which was already on record. In this view of mine. I direct the Magistrate to permit the parties to let in such additional evidence as they may desire to adduce and decide the matter on the evidence already on record and on the evidence to be placed before him hereafter.

(18) Direction issued accordingly.

Order accordingly.