

(1975) 02 AHC CK 0007

In the Allahabad High Court

Case No : Criminal Revision No. 1036 of 1975 in Case No 15 of 1974

Raja Shri Yadvendra Dutt Dube and Others

APPELLANT

Vs

The District Sports Association and Another

RESPONDENT

Date of Decision : 03-02-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 12, 145, 484, 484(2)

Criminal Procedure Code, 1973 (CrPC) — Section 11, 12, 145, 484, 484(2)

Criminal Procedure Code, 1973 (CrPC) — Section 11, 12, 145, 484, 484(2)

Citation : (1976) AWC 139

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Advocate : K.B.L. Gour, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Kapoor, J.—This revision arises out of proceedings u/s 145 Code of Criminal Procedure which were started on the basis of an application dated 2-1-1974 filed by Faqir Hussain, Advocate, Football Secretary of the District Sports Association, Jaunpur on the allegations that certain plots Nos. 88, 161, 160, 159, 158, 163, 164 and 165 were playground of the District Sports Association and were under its possession for the last several years. But the opposite party Raja Yadvendra Datt Dube along with his employees was interfering with the possession of the aforesaid Association by trying to cultivate them forcibly and as such there was apprehension of breach of the peace. This application was filed before the Sub-Divisional Magistrate, who got an enquiry made through the Tahsildar. It may be stated here that earlier similar application had been filed on. 18-10-1973 by Faqir Hussain u/s 145 Code of Criminal Procedure but that was ordered to be filed by the Sub-Divisional Magistrate after a report of the Station Officer, Kotwali had been sent for who had reported that only plots Nos. 147 and 162 were included in the field-of the Indian Club while the other plots were under the cultivatory possession of Raja Yadvendra Datt Dube. In the second application it was alleged that the Station Officer was colluding with Raja Yadvendra Datt Dube

and so this time the Sub-Divisional Magistrate got an enquiry made through the Tahsildar. The report of the Thasildar dated 15-3-1974 was in favour of the District Sports Association and so the Sub-Divisional Magistrate passed the preliminary order on. 17-4-1974. Sri R.S. Srivastava, Sub-Divisional Magistrate before whom these proceedings were pending was transferred from the district of Jaunpur and Sri K.K. Dwivedi was subsequently posted at Jaunpur and the case was transferred to his Court. Further proceedings continued in the court of Sri K.K. Dwivedi, who passed the final order dated 10-9-1975 confirming the preliminary order and restraining Raja Yadvendra Datt Dube and the other revisionist from interfering with the possession of the District Sports Association. He ordered that the District Sports Association, Jaunpur, the first party shall remain in possession of the plots in dispute.

2. Feeling aggrieved by this order, this revision has been filed.

3. The first point that arises for decision is whether the proceedings u/s 145 Code of Criminal Procedure should be deemed to be under the Old Code of Criminal Procedure or the New Code of Criminal Procedure. The learned Asstt. Govt. Advocate argued that the proceedings u/s 145 Code of Criminal Procedure actually started after the passing of the preliminary order and as such these proceedings should be deemed to be under the New Code of Criminal Procedure. I do not agree with this contention. As the application had been moved on 2-1-1974 and the enquiry had already been ordered by the Sub-Divisional Magistrate through the Tahsildar on the basis of that application and the report of the Tahsildar too is dated 15-3-1974, the proceedings should, therefore, be deemed to be under the Old Code of Criminal Procedure. I may observe that in case the proceedings could have been deemed to be under the New Code of Criminal Procedure it would not have been open to the learned Magistrate to have proceeded further and to pass the final order u/s 145 Code of Criminal Procedure. After the property had been attached, as was held by me in the case of Chandi Prasad and Others Vs. Om Prakash Kanodia and Others, . It is significant that the property in the present case was also attached on 17-4-1974.

4. However, as observed above, I am of the opinion that the proceedings should be deemed to have been started under the Old Code of Criminal Procedure. The first application was filed before the Sub-Divisional Magistrate on 2-1-1974 and he himself had ordered an enquiry on that application. In my opinion, the provisions of Section 484(2) Code of Criminal Procedure will apply to such an application or enquiry.

5. Sri K.B.L. Gour learned Counsel for the revisionist argued that the proceedings being under the old Code of Criminal Procedure, could have been continued by the Magistrate First Class, Sub-Divisional Magistrate or the District Magistrate who was posted in the district from before and not by an Executive Magistrate, who was posted in the district after the 1st of April, 1974. According to him, even the Sub-Divisional Magistrate should have powers of First Class Magistrate, as provided under Schedule III Clause 3 Sub-clause (7) of the Code of Criminal

Procedure (Old). He has even argued that the Executive Magistrate could not retain powers of the Magistrate First Class after coming into force of the new Code of Criminal Procedure and as such this case could not have been decided by any Executive Magistrate. So far that point is concerned, I have already decided in Cr. Misc. No. 2158 of 1975 Visheshwar Pathak v. State connected with Cr. Misc. No. 2602 of 1975 Ram Prakash Misra v. State decided on 18-8-1975 that the powers of the Magistrate First Class conferred on Executive Magistrate prior to the coming into force of the New Code, would remain intact u/s 484(2)(b) for the limited purpose of continuing cases pending in courts from before as that was the intention of the legislature in enacting Section 484(2)(a) Code of Criminal Procedure. The only exception was in the case of Special Magistrates when fresh powers had to be conferred. In deciding that case I had also considered the opinion of the Division Bench in Cr. Case No. 4207 of 1974, Debi Singh v. State decided by Bakshi J. on 12-5-1975. He had referred certain questions to the Division Bench which were answered on 14-3-1975. In that case by implication it can be said that even the Division Bench was of the opinion that powers of First Class Magistrates conferred on Sub-Divisional Magistrate were saved for continuing old cases even though these Sub-Divisional Magistrates were described as Executive Magistrates under the new Code of Criminal Procedure.

6. Sri Gour has argued that u/s 484(2)(b) only those powers conferred or notifications issued etc. have been saved which could have been issued under the corresponding provisions of this Code and since there is no provision for conferring powers on Magistrate First Class in the New Code, powers conferred as Magistrate First Class under the old Code of Criminal Procedure have not been saved. According to him u/s 11 Code of Criminal Procedure Judicial Magistrates of First Class and Second Class have been created while u/s 12 Code of Criminal Procedure the law contemplated of creating Magistrates of First, Second or Third Class. Those Magistrates cannot be placed in the category of Judicial Magistrates. This argument will render the provisions of Section 484(2) Code of Criminal Procedure to be nugatory, and it will not be possible to continue any case which was pending under the old Code of Criminal Procedure either before the Judicial Officer or the Executive Magistrate of the First Class because the old Code of Criminal Procedure did not recognise even the Judicial Officer which was a creation by the Govt. order in this State. The language of Section 484 Code of Criminal Procedure may not be happily worded but I have no doubt that the intention of the legislature was to save the powers of the Magistrate First Class or Second Class or Third Class conferred on various officers under the old Code of Criminal Procedure for the purpose of continuing pending cases after the coming into force of the new Code of Criminal Procedure.

7. Sri Gour has next argued that u/s 12 Code of Criminal Procedure (old) powers as Magistrate First Class are conferred on an officer at the time when he is posted in a particular district and he could exercise those powers in that district only and as such in the present case Sri K.K. Dwivedi, who was transferred to Jaunpur after 1st of April, 1974 as Executive Magistrate, could not exercise the

powers of Magistrate First Class. I had sent for the Gazette notifications (conferring powers of Magistrate First Class on Sri K.K. Dwivedi. The powers were conferred on him by notification No. 2062/6-240-66 dated June 24, 1966, Home Department u/s 12 Code of Criminal Procedure published in the Gazette dated 2-7-1966. The language is clear that the powers as Magistrate First Class have been conferred on him generally and they are to be exercised any where he is posted as Deputy Collector. He was posted as Deputy Collector at Jaunpur and so he could exercise powers of Magistrate First Class which had been conferred by this notification, in the District of Jaunpur also for the limited purpose of continuing pending cases which were to be continued under the provisions of the Code of Criminal Procedure 1898. For this purpose, the notification issued on June 24, 1966 will be deemed to have been issued under the corresponding provisions of the new Code. It will, therefore, make no difference whether Sri K.K. Dwivedi was posted in the district of Jaunpur from before 1st of April, 1974 or was posted thereafter the 1st of April, 1974. In my opinion, he had full jurisdiction to continue with the case u/s 145 Code of Criminal Procedure under the provisions of the old Code of Criminal Procedure.

8. Lastly, Sri Gour has argued that the learned Magistrate has placed reliance on certain extracts of khatauni and khasra showing that there was a maidan of the Indian Club in the disputed plots. He has also placed reliance on the affidavits of certain persons to the effect that these plots were in the possession of the Indian Club and the District Sports Association but no finding has been recorded that the Indian Club had merged into District Sports Association. I have also examined the affidavits of some persons in this connection. From the affidavit of Raja-ram, who has described himself as Secretary of the District Sports Association and the Joint Secretary of the Indian Club, it appears that the disputed plots were in the possession, of the District Sports Association and the Indian Club. On behalf of the revisionist, the very existence of the Indian Club was denied. In my opinion, specific evidence should have been adduced in this case showing the connection of the District Sports Association and the Indian Club. The learned Magistrate too should have recorded a clear finding about such connection and then only he should have made use of the evidence which was in favour of the Indian Club for the purpose of proving possession of the District Sports Association. He has made a confusion by relying on the evidence which was in favour of the Indian Club as showing possession of the District Sports Association without even indicating as to what was the connection between the two. It is one thing to hold that certain entries in favour of the Indian Club show that the revisionists or the second party were not in cultivatory possession for several years. But, it is another thing to hold that the first party was in actual possession over the land in dispute within two months prior to the issue of the preliminary order.

9. I, therefore, deem it proper that this case should be sent back to the learned Magistrate concerned for allowing both the parties to adduce fresh evidence and then to decide whether the District Sports Association Jaunpur alone was in

actual possession of the disputed land and is entitled to be given delivery of possession over that land.

10. The revision is accordingly allowed and the order dated 10-9-1975 is set aside. The case is sent back to the Magistrate concerned for deciding afresh in the light of the observations made above after allowing opportunity to both the parties to lead such additional evidence as they deem necessary.