
(2017) 01 DEL CK 0179

In the Delhi High Court

Case No : W.P (Crl.) No. 1858 of 2016 and Crl. M.A. No. 9634 of 2016

Ranjiv Khanna

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2017) 1 JCC 707

Hon'ble Judges : Vipin Sanghi, J.

Bench : Single Bench

Advocate : Mr. Deepak Gandhi, Mr., Dhruv Gandhi & Mr. Arhum Sayeed, Advocates, for the Petitioner; Mr. Rajesh Mahajan, ASC and Mr. Peeyush Bhatia, Advocate. along with SI Net Ram. PS-Kotwali, Advocate, for the Respondents/ State

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present writ petition to seek a writ of certiorari in respect of the Kalandra and proceedings under Section 145 Cr.P.C. dated 23.04.2016 initiated by the police of Police Station - Kotwali, Chandni Chowk, Delhi.

2. The case of the petitioner is that the petitioner is the owner of the shop in question bearing No. 1896, Main Road, Chandni Chowk, Delhi. The petitioner states that the petitioner was running its business in the said shop. The petitioner entered into a partnership with respondent No.5 on 30.10.2015. Under the partnership, the business was to be carried out under the name & style of M/s Khanna Trading Co., which was also the name and style under which the petitioner was earlier having his own business. The nature of business was mainly to deal in trading of clothes. The case of the petitioner is that since disputes arose between the petitioner and respondent No.5, the said partnership was rescinded by the petitioner on 25.02.2016. The petitioner states that the

petitioner was in occupation and control of the said shop.

3. On 01.04.2016, the respondent No.5 and a few other accomplices came to the said shop and indulged in violence with the petitioner, his son and nephew. All three of them received injuries and they were medically examined. On the same day, proceedings under Section 107/151 Cr.P.C. were undertaken by the police, and the petitioner also furnished his bond to maintain good conduct. The keys of the said premises were taken from the petitioner on the same day, i.e. 01.04.2016 against acknowledgement in the presence of respondent No.5.

4. The petitioner then moved an application before the learned Special Executive Magistrate for return of the keys of the said shop on 13.04.2016. Orders were passed on the said application by the learned Special Executive Magistrate directing that the keys be returned to the "rightful owner".

5. Since it was not clear as to who was the "rightful owner", and there was possibility of ambiguity and play in the said order, yet another application was moved by the petitioner before the learned Special Executive Magistrate on 16.04.2016. On this application, the learned Special Executive Magistrate passed the order that the keys be returned to the original owner, i.e. the petitioner by name, which had been seized vide DD No.5B. However, the keys were not returned by the police to the petitioner, and after passage of one week, the Kalandral proceedings under Section 145 Cr.P.C. were undertaken before the learned SDM. Kotwali, Delhi. Those proceedings are still pending, and consequently, the petitioner is out of possession of his own shop despite the fact that the keys were deposited by him with the police on 01.04.2016.

6. The submission of learned counsel for the petitioner is that the initiation of the proceedings under Section 145 Cr.P.C. was wholly uncalled for and was mala fide. The keys of the premises had been deposited by the petitioner with the police on 01.04.2016, and on the two applications tiled by the petitioner, direction has been issued by the learned Special Executive Magistrate for release of the keys to the rightful owner, i.e. the petitioner. The proceedings under Section 145 Cr.P.C. were initiated much later, i.e. over three weeks after the date of the incident on 01.04.2016 at the shop premises, and by then, there was no occasion to initiate the said proceedings as there could be no apprehension of breach of peace. Learned counsel submits that the two orders passed by the learned Special Executive Magistrate on 13.04.2016 and 16.04.2016 were not assailed either by the police, or by the respondent No.5.

7. On the other hand, Mr. Mahajan submits that even when proceedings under Section 107/ 151 Cr.P.C. were undertaken, the dispute with regard to the claim to the keys of the premises was recorded since the petitioner, on the one hand, and respondent No.5 on the other hand, claimed that the keys belong to them. According to the respondent No.5, the keys had been taken by the petitioner from an employee of respondent No.5 on 01.04.2016.

8. Despite notice to respondent No.5, neither counter-affidavit/ reply has been

filed by respondent No.5 in these proceedings, nor is respondent No.5 represented today. Thus, there is no contest by respondent No.5 to the present petition.

9. Having heard learned counsel for the petitioner and Mr. Mahajan, it appears to me that there was absolutely no justification for initiation of proceedings under Section 145 Cr.P.C. in the present case. Pertinently, the said proceedings were not initiated on 01.04.2016, or soon thereafter. The purpose of initiation of proceedings under Section 145 Cr.P.C. is to contain the immediate breach of peace that may be apprehended by the police on account of a dispute with regard to possession of an immoveable property.

10. In *Ashok Kumar v. State of Uttarakhand & Others*, (2013) 3 SCC 366, the Supreme Court had the occasion to comment on the object and purpose of Sections 145 & 146 Cr.P.C. The Supreme Court, inter alia, observed as follows:

"6. The object of Section 145 Cr. P. C. is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute.

7. xxxxxxxxxx

8. xxxxxxxxxx

9.....Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145 CrPC. It can only be read in the context of Section 145 CrPC. If after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(I) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof.

10. The ingredients necessary for passing an order under Section 145(1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of a breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be material on record before the Magistrate when the submission of the parties is tiled, documents produced or evidence adduced.

11. We find from this case that there is nothing to show that an emergency

exists so as to invoke Section 146(I) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant Ashok Kumar, whether it is legal or not, is not for the SDM to decide."

11. The Bombay High Court, in *Dilkush Guno Velip v. State*, 2016 SCC OnLine Bom 2545, also had occasion to deal with Sections 145 & 146 Cr.P.C. The said Court, inter alia, observed:

" 10.....Be that as it may, it would be necessary to consider the object, scope and ambit of the proceedings under section 145 of Cr.P.C. The said section falls in Chapter X of Cr.P.C. which pertains to maintenance of public order and tranquility. Section 145 falls in part (D) of Chapter X, which pertains to "disputes as to immovable property". A perusal of section 145(1) of Cr.P.C would make it clear that it is a piece of conditional jurisdiction conferred on a Executive Magistrate. In other words, it is only when the Executive Magistrate is satisfied from a report of a police officer or upon other information that the dispute as to immovable property is likely to cause breach of peace that he shall make an order in writing stating the grounds of he being so satisfied and calling upon the parties to put their rival claims, as to the fact of actual possession of the subject of dispute. Sub section (4) of section 145 would further make it clear that the individual rights of the parties on merits cannot be gone into and decided in a proceeding under section 145 of Cr.P.C. Sub section (5) of section 145 would make it clear that it is open to any of the parties to show that no such dispute as aforesaid exists or existed in which case the learned Magistrate is obliged to cancel the said preliminary order.

11. It can thus be seen that the jurisdiction to initiate and entertain proceedings under section 145 would be contingent on the fact of there being a real apprehension of breach of public peace, being in existence, on account of the dispute over the immovable property. The proceedings under section 145 cannot be a platform for the parties to stake their rights and convert the same into a private dispute. It is essentially a State case and the sole object and purpose is to prevent breach of public peace on account of any dispute between the parties over an immovable property. "

12. In the present case, the keys of the premises were admittedly taken from the petitioner and deposited by the petitioner with the police on 01.04.2016. The petitioner's application for release of the keys was allowed by the learned Special Executive Magistrate on 13.04.2016 directing return of keys to the rightful owner. The said aspect was further clarified on 16.04.2016. Neither respondent No.5 nor the police took any steps in relation to either of these two orders. Despite the direction issued by the learned Special Executive Magistrate,

the police did not comply with the same and did not return the keys and, instead, proceeded to initiate proceedings under Section 145 Cr.P.C. much later, i.e. 23.04.2016. As on 23.04.2016, there was no real apprehension of breach of public peace with regard to the issue of possession of the aforesaid shop. Respondent No.5 had neither staked his claim for possession of the said shop before the learned Special Executive Magistrate, nor, apparently, opposed the application made by the petitioner for release of the keys of the shop to him. The said action of the police was, thus, completely unjustified.

13. The respondent No.5 had the opportunity to stake his own claim to the keys of the premises when the petitioner moved the application on 13.04.2016 and again on 16.04.2016, or even otherwise. Respondent No.5 did not take any such step. Even after passing of these orders, no steps were taken by him, presumably, because the police kept acting as his agent.

14. In view of the aforesaid, the petition is allowed and the proceedings initiated vide impugned Kalandra dated 23.04.2016 under Section 145 Cr.P.C. in respect of the premises in question vide DD No.I9A registered at Police Station - Kotwail, Delhi are quashed. The SHO, Police Station -Kotwail, Delhi is directed to forthwith return the keys of the premises in question to the petitioner without any delay today itself

15. Dasti.