

(1983) 02 OHC CK 0004

In the Orissa High Court

Case No : Criminal Revision No. 489 of 1980

Ranka Sahu alias Rankanidhi Sahu and Another

APPELLANT

Vs

Pratap Chandra Das and Others

RESPONDENT

Date of Decision : 14-02-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(5), 362, 369, 397

Citation : (1983) 55 CLT 340

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : Ashok Mohanty, S.D. Dash and G.S. Dash, for the Appellant; Non, for the Respondent

Final Decision : Allowed

Judgement

B.K. Bchera, J.—Can a Magistrate restore a proceeding u/s 145 of the Code of Criminal Procedure (for short, the "Code") dropped earlier by him on the ground of absence of apprehension of breach of the peace u/s 145(5) of the Code? This is the question for consideration in this revision. The application in revision has been made under Sections 397 and 401 of the Code. Mr. S.D. Dash, the learned Counsel for the Petitioners, who along with the opposite party Nos. 2 and 3 were the members of the second party in the court below, in the proceeding in which the opposite party No. 1 was the sole member of the first party, has contended, placing reliance on the decisions reported in Kailash Chandra Panigrahi v. Gayaram Patel and two Ors. 39 (1973) C.L.T. 729 and Hari Shanker and Others Vs. Shri Bali, , that the learned Magistrate had no jurisdiction to revive the proceeding dropped by him u/s 145(5) of the Code. The opposite party No. 1 had earlier been represented by his Advocates who submitted on 18-1-1983 that they had no further instructions to appear on his behalf. The opposite party No. 1 has not entered appearance at the hearing of this revision either personally or through any Advocate.

2. A proceeding u/s 145 of the Code between the parties had been drawn up on

November 26, 1979. On 18-1-1980, the learned Executive Magistrate dropped the proceeding taking into consideration on the report of the custodian that the crop had been removed and because it appeared to the learned Executive Magistrate that there was no longer apprehension of breach of the peace. On 23-1-1980, on an application for restoration made by the opposite party No. 1, the learned Executive Magistrate, after hearing the opposite party No. 1 whose contention was that there still existed apprehension of breach of the peace, restored the proceeding dropped by him. This order, it may be kept in mind, had been passed without notice to the present Petitioners and the other members of the second party. The proceeding went on for quite sometime before the Petitioners and the other members of the second party received notices after the proceeding was restored and on August 23, 1980, the Petitioners made an application stating that the proceedings was not maintainable as a proceeding once dropped could not be revived. After hearing both the sides, the learned Executive Magistrate did not accept the contention raised on behalf of the Petitioners. It is thus that the matter has come to this Court for quashing the proceeding u/s 145 of the Code.

3. Section 362 of the Code provides:

Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

This section corresponds to Section 369 of the old Code. This Court has ruled in *Kailash Chandra Panigrahi v. Gayaram Patel and two Ors.* 39 (1973) C.L.T. 729 (supra) that once a proceeding u/s 145 has been closed on the ground that there was no likelihood of breach of the peace, the Magistrate has no jurisdiction to revive the closed case without a fresh report and a fresh preliminary order. The same view has been taken by the Allahabad High Court in *Hari Shanker and Others Vs. Shri Bali*, . It has been held in this reported case that after a valid order cancelling the proceeding u/s 145 has been passed, the proceeding comes to an end and the Magistrate, who has become functus officio, cannot assume jurisdiction to recall the earlier order.

There can be no doubt that the order dropping a proceeding u/s 145(5) of the Code is a final order disposing of a case within the meaning of Section 362 of the Code. Once such an order has been passed, the Court cannot alter or review the same except with regard to any clerical or arithmetical error. I must, therefore, accept the contention raised on behalf of the Petitioners that the impugned order restoring the proceeding, which had earlier been dropped, had been passed without jurisdiction and was in flagrant violation of the provisions of Section 362 of the Code.

4. No doubt, the impugned order reviving the proceeding had been passed on 23-1-1980, but as would appear from the orders passed in the order sheet and

as has been submitted by Mr. Dash for the Petitioners, it took sometime for serving notices on them whereafter they made an application before the learned Executive Magistrate on August 23, 1980 and after the learned Executive Magistrate rejected their application, they have come to this Court. It cannot, therefore, be said that they have not come to this Court in time. That apart, as it has come to the notice of this Court that an illegal order has been passed without Jurisdiction, it is necessary in the interests of justice and to prevent an abuse of the process of the Court that the impugned order reviving the proceeding dropped earlier is set at naught by exercising the inherent jurisdiction of this Court u/s 482 of the Code.

5. I would accordingly allow the application in revision and quash the proceeding u/s 145 of the Code. I would like to make it clear that if a fresh application is made by the Opposite party No. 1 or if otherwise the learned Executive Magistrate is satisfied that there is still apprehension at breach of the peace in respect of possession of the land, it would be open to the learned Executive Magistrate to start a proceeding afresh in accordance with law.