

(1958) 10 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 411 of 1957 and Case Referred No. 93 of 1957

Sagarla Pitchamma and Others

APPELLANT

Vs

Lakshmi Narasamma and Another

RESPONDENT

Date of Decision : 01-10-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146

Citation : AIR 1959 AP 425 : (1959) CriLJ 1957

Hon'ble Judges : Munikannaiah, J

Bench : Single Bench

Advocate : P. Venkatadri Sastri, for the Appellant; S. Surya Prakasam and V. Venkateswarlu, for the Respondent

Judgement

Munikannai, J.—This Revision u/s 438 Criminal P.C., arises out of the dropping of the petition filed u/s 145, Criminal P.C., by the Munsif Magistrate, Nalgonda, on the ground that none on behalf of the parties is present and hence it appeared to him that no dispute in respect of the house likely to cause a breach of peace existed. The second party filed an application for revising the orders before the Sessions Judge at Nalgonda. He considered the facts of the case and concluded that the proper order in the circumstances to pass is u/s 146, Criminal P.C., and not u/s 145, Sub-section (5).

This reference is made by him with the recommendation for remanding the case to the Court of the Munsif-Magistrate either to take action u/s 146, Criminal P.C., or to decide the question of actual possession on merits after hearing the arguments of parties or after going through the record.

2. Mr. Suryaprakasam, the learned counsel for the first party, contends that under Sub-section (5) of Section 145, Criminal P.C., courts can act suo motu and drop proceedings if it appears to it that there exists no dispute any longer in respect of the property likely to cause a breach of the peace, and that before taking that step it is not always necessary for the parties alone to show that no

such dispute exists or existed.

As to the power of the court to drop proceedings when certain conclusion has been reached in regard to the non-existence of the dispute there can be no question vide *Velur Devasthanam Vs. A. Sambandamurthi Nainar*, ; and *Kesanna v. Ramaswami*, 1954 2 M LJ 122.

The reference also does not seek to contest this position; but raises two other important points namely, that it is not legitimate to conclude from the absence of the parties at the hearing that there does not exist any dispute likely to cause a breach of the peace and secondly, that in cases where the parties do not assist the court by being present at the hearing, the conclusion that has to be reached is that it is not possible in that state of affairs to decide as to which of the parties was then in possession.

3. It is contended in support of the reference that the Court having been satisfied while passing, the preliminary order u/s 145, Criminal P.C. that a dispute likely to cause a breach of the peace existed, the dropping of the proceedings later on, without further material on record would be tantamount to an unreasonable cancellation of that order which is meant mainly to prevent the breach of peace.

From this it is argued that in cases where there is a preliminary order u/s 145, Criminal P.C., there could be no dismissal of an application or dropping of proceedings merely on the ground of the absence of any one or of all parties. There-is force in this contention. The nature of proceedings available u/s 145, Criminal P.C., is primarily meant to prevent the breach of peace and if the court is satisfied that the dispute likely to cause breach of peace existed, the duty of preventing such breach and giving a finding as to possession would continue to be there irrespective of the fact that the parties have been regular in their attendance at the hearing or have withdrawn their assistance to the court.

The absence of the provision in the Criminal Procedure Code for dismissal in default of appearance of the parties to applications u/s 145, Criminal P.C., is also significant. It follows that the procedure provided for in regard to these possession proceedings docs not at all give room for dismissal of the application or cancellation of the order passed under Sub-section (1) of Section 145, Criminal P.C., on account or as a result of the absence of the parties.

However, the decision reported in *Ram Chandra Shau and Others Vs. Madhab Nayek and Others*, , reveals a different view. There it is held that the Court has got jurisdiction to dismiss a case of the party who does not discharge the onus that is upon it of proving the case with which it came to the court. Indeed if the question of dismissal of the application is dependent upon the discharge of the onus of proof, certainly it would be so.

But, as it happens, when it turns upon the proper exercise of the jurisdiction vested in a court, the question will have to be decided strictly with reference to the provisions which empower a court to exercise these summary powers of

preventing breach of peace and driving the party out of possession to civil proceedings. In this view, I hold that the Criminal Procedure Code provides for the dropping of proceedings by the Court only when it could, on the appraisal of the situation, whether by itself or brought to its notice by parties or person interested, reach the conclusion that the dispute likely to cause a breach no longer exists. Courts cannot therefore dismiss these proceedings for the default of the appearance of parties.

4. The next question is whether when parties do not turn up at the time of hearing, the conclusion that the dispute no longer exists is necessary or legitimate. If that conclusion alone and none else can follow from the absence of parties at the time of hearing, then it is not only legitimate but would also be a necessary one. But the absence of the parties from a court may be for more reasons than one.

It may be that after the preliminary order has been passed by the Court, the parties may well desire that a civil Court may decide it and so keep away from the Court in which case the reason for the absence of the parties is not the abatement of the dispute, but their desire to avail further proceedings in pursuance of Section 146, Criminal P.C. Therefore, it is not improbable that other reasons exist.

Though, a Court, placed in such a situation, cannot imagine evidence in the absence of it, still it can be definite about its inability to come to a conclusion as to possession. It has then to proceed to state a case to a civil Court as required under Sub-section (1) of Section 146, Criminal P.C. I, therefore, accept the reference and remand the case to the Munsif-Magistrate, Nalgonda for proceedings u/s 146(1) of the Code of Criminal Procedure.