
(1977) 07 RAJ CK 0030

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No. 435 of 1976

Sanwanta Ram

APPELLANT

Vs

Asha Ram and Another

RESPONDENT

Date of Decision : 28-07-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 482

Citation : (1977) RLW 360 : (1977) WLN 366

Hon'ble Judges : K.D. Sharma, J

Bench : Single Bench

Judgement

K.D. Sharma, J.—This is an application filed by Sanwata Ram u/s 482, Cr. P.C. for quashing an order of the Sub-Divisional Magistrate, Nagaur, dated 18th December, 1975, by which he refused to withdraw the attachment of the land in dispute on the ground that after attachment of the subject of dispute in a case of emergency under Sub-section (1) of Section 146, Cr. P.C. he has become functus-officio and is not empowered to take further proceedings in the case u/s 145. Cr. PC. The reason given out by the Sub-Divisional Magistrate, Nagaur, for holding the above view is that the attachment of the subject of dispute subsists until a competent court determines the rights of the parties thereto with regard to the person entitled to the possession thereof. It appears that in passing the impugned order the Sub-Divisional Magistrate has relied upon an authority of this Court Umarao v. Sheonarayan RLW 1975 355. Sanwata Ram, against whom proceedings u/s 145 Cr. P.C. were initiated, filed a revision-petition in the court of the Sessions Judge, Merta, who, after hearing the parties, dismissed the revision-petition in a cursory manner. Hence, Sanwata Ram has invoked inherent jurisdiction of this Court for getting the impugned orders of the Sub-Divisional Magistrate, Nagaur and the Sessions, Judge, Merta, quashed by this Court.

2. I have carefully gone through the record and heard Mr. Ganpat Singh Mehta for the applicant and Dr. S.S. Bhandawat, Public Prosecutor, for the State. Asha Ram, non-applicant, did not put in appearance before me despite service of

notice. It has been vehemently contended before me by the learned Counsel for the applicant that the Divisional Magistrate, Nagaur, and the Sessions Judge, Merta, ignored the provisions contained in the proviso to Sub-section (1) of Section 146, Cr. PC. The proviso clearly lays down that the Magistrate may withdraw the attachment at any stage of the proceedings if he is satisfied that there is no longer any apprehension of breach of the peace with regard to the subject of the dispute. The learned Counsel further submitted that the Sub-Divisional Magistrate did not apply his judicial mind to the materials on the record to determine the question whether danger of breach of the peace with regard to the disputed land still persists or not. According to the learned Counsel, the Sub-Divisional Magistrate misunderstood the law laid down in the referred to above authority of this Court and wrongly held on its basis that he was functus-officio and powerless to decide the application filed by the petitioner for withdrawal of the attachment. Dr. S.S. Bhandawat, Public Prosecutor, appearing for the State, has not disputed the legal position taken-up by Mr. Ganpat Singh Mehta in his arguments. He frankly conceded before me that in view of the proviso appended to Sub-section (1) of Section 146 Cr. P.C. the Magistrate may, in his discretion, withdraw the attachment at any stage of the proceedings, provided he has satisfied himself that there is no longer any apprehension of breach of the peace with regard to the property in dispute.

3. I have considered the above contention raised by Mr. Ganpat Singh learned Counsel for the petitioner. It appears from the record that the Sub-Divisional Magistrate Nagaur, drew up a preliminary order in this case on 25th September, 1975 and, upon being satisfied that the case was one of emergency, attached the land in dispute by an order dated 30th September, 1975 and appointed the Revenue Inspector, Jayal, to be the receiver thereof. When Sanwanta Ram came to know of the attachment of the land in dispute, he made an application to the Sub-Divisional Magistrate for withdrawal of the attachment of the land on the ground that there was no likelihood of breach of the peace with regard to disputed land as it had been in his continuous and indisputable possession since 24th April, 1975, on which date he had purchased it from its Khatedar Mst. Nanuri, vide registered sale deed dated 24th April 1975. The Sub-Divisional Magistrate rejected this application without applying his judicial mind to the materials on the record and without coming to a conclusion whether he was or was not satisfied that there is no longer any apprehension of breach of the peace with regard to the land in controversy. It is nowhere laid down in the referred to above authority relied upon by the Sub-Divisional Magistrate that after attaching the land the Magistrate has no power to withdraw the attachment at any time if he is satisfied that there is no longer any apprehension of breach of the peace with regard to the subject of dispute. It appears that the Sub-Divisional Magistrate has not carefully gone through the authority of this Court. If he had taken care to pursue the authority, he would not have passed the impugned order rejecting the application of the petitioner. The Sessions Judge, Merta, also overlooked the important proviso to Sub-section(1) of Section 146, Cr. P.C.

wrongly dismissed the revision-petition in a cursory manner. I would also like to observe that attachment of the subject of dispute should not be ordered as a matter of routine. It should be ordered by the Magistrate after satisfying himself as to the existence of a real-emergency. The order of attachment must show that there was material on the record on the basis of which the Magistrate has come to a conclusion about the imminent danger of breach of the peace necessitating attachment of the subject of dispute. It is no doubt true that the question whether the case is of such an emergency as to justify an attachment is one entirely within the discretion of the Magistrate and exercise of such a discretion cannot be lightly interfered with, but, if the discretion is exercised in an arbitrary manner and not on sound judicial principles without due care and caution, with the result that the rightful occupier is deprived of his possession of the property in dispute, this Court will not hesitate to interfere with the order of attachment in exercise of its inherent powers. As I have held above that the Sub-Divisional Magistrate ignored the provisions contained in the proviso to Sub-section (1) of Section 146, Cr. P.C. and wrongly held on the basis of the authority of this Court that he was functus-officio and unable to decide the question whether the attachment should or should not continue, the application u/s 482, Cr. P.C. filed by the petitioner merits acceptance.

4. I, therefore, accept this application filed by Sanwat Ram under S., 482, Cr. P.C. and quash the order of the Sub-Divisional Magistrate, Nagaur, dated 18th December, 1975 and that of the Sessions Judge, Merta, dated 16th January, 1976, and send the case back to the Sub-Divisional Magistrate, Nagaur, for giving a fresh decision on the application of the petitioner for withdrawal of the attachment of the land in dispute in accordance with law and in the light of the observations made above.