
(2013) 07 AHC CK 0096

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 3788 of 2013

Sharad Yadav @ Gappu and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146, 146(1)

Citation : (2013) 7 ADJ 374 : (2013) 6 ALJ 135 : (2013) 82 ALLCC 832 : (2013) 100 ALR 367

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : Arvind Srivastava, for the Appellant; Sunil Kumar Srivastava, for the Respondent

Judgement

S.C. Agarwal, J.—This criminal writ petition has been filed with a prayer to quash order dated 22.12.2012 passed u/s 146(1) Cr.P.C. by Additional City Magistrate-III, Allahabad in case No. 16 of 2012 u/s 145 Cr.P.C., P.S. Attarsuiya, District Allahabad, State v. Sharad Yadav @ Gappu and another, as well as order dated 18.2.2013 passed by Additional Sessions Judge, Ex-cadre, Room No. 20, Allahabad in criminal revision No. 13 of 2013 (Annexures 3 and 15). A further prayer has been made for quashing the proceedings under Sections 145 and 146(1) Cr.P.C. Heard Sri Arvind Srivastava, learned counsel for the petitioner, learned A.G.A. for the State and Sri Sunil Kumar Srivastava, learned counsel for respondent No. 3.

In brief, the facts are that on 28.11.2012, S.H.O., P.S. Attarsuiya, Allahabad submitted a report u/s 145 Cr.P.C. against Sharad Yadav @ Gappu-petitioner No. 1 and Pratim Tripathi @ Jeenu-respondent No. 3 stating therein that on inquiry, it was found that there was a dispute between the parties regarding disputed property, which was in possession of the first party-Sharad Yadav, who was running a dairy in the said property and had purchased the same from Dilip Kumar Khare vide sale-deed dated 31.10.2012. On the basis of said report,

learned Additional City Magistrate-III, Allahabad vide two separate orders dated 22.12.2012 passed preliminary order u/s 145(1) Cr.P.C. as well as an order u/s 146(1) Cr.P.C. directing attachment of the property and consequently the property was attached on 18.1.2013 and the room as well as the boundary gate were locked by the police.

2. Feeling aggrieved, the petitioner No. 1 preferred criminal revision No. 13 of 2013, Sharad Yadav @ Gappu v. State of U.P. and another, which was dismissed by Additional Sessions Judge, Ex-cadre, Court No. 20, Allahabad vide order dated 18.2.2013.

3. Counter and rejoinder-affidavits have been exchanged.

It is submitted by learned counsel for the petitioners that in the absence of ingredients of Sections 145 and 146 Cr.P.C., proceedings cannot be initiated under it as a cloak to dispossess the persons in possession of the premises on the date when the proceedings were initiated. In both the orders under Sections 145(1) and 146(1) Cr.P.C., learned Executive Magistrate admitted that petitioner No. 1 was in occupation of the premises in dispute in pursuance of the sale-deed dated 31.10.2012 and the impugned orders were passed by learned Additional City Magistrate only on the ground that there was a possibility of breach of peace. It was contended that the petitioners were in possession over the property in dispute having their house constructed over it and were also running dairy business on the same. Their name has been recorded in Municipal records. It was further submitted that the proceedings u/s 146(1) can only be pressed into service if the Magistrate is unable to decide as to which party was in possession, but where the Magistrate admitted in the impugned orders that petitioner No. 1 was in possession of the property in dispute, the initiation of proceedings was simply an abuse of process of law and the Magistrate had no jurisdiction to evict the petitioners by passing an order of attachment.

4. Learned A.G.A. as well as learned counsel for respondent No. 3 supported the impugned orders and submitted that impugned orders have been passed by Additional City Magistrate in order to maintain law and order on the spot on the basis of report submitted by police. The petitioners claimed that petitioner No. 2 purchased the disputed property measuring 48 square yards through sale-deed dated 31.10.2012 whereas the real facts are that the disputed land belongs to one Babu Vishambhar Nath and sale-deed dated 31.10.2012 has been challenged by respondent No. 3 through civil suit No. 1291 of 2012 before Civil Judge (S.D.), Allahabad wherein notices have been issued. It was also claimed that respondent No. 3 is in possession of the disputed plot on the basis of adverse possession since long. It was also submitted that Dilip Khare had no right or title to execute a sale-deed in favour of petitioner No. 2.

5. In Ashok Kumar Vs. State of Uttarakhand and Others, , it was held that:--

The above order would indicate that the SDM has, in our view, wrongly invoked the powers u/s 146(1), Cr.P.C. u/s 146(1), a Magistrate can pass an order of

attachment of the subject of dispute if it be a case of emergency, or if he decides that none of the parties was in such possession, or he cannot decide as to which of them was in possession. 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, Cr.P.C. It can only be read in the context of Section 145, Cr.P.C. If after the enquiry u/s 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 u/s 145(1) 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.

6. In the police report as well as in the orders under Sections 145(1) and 146(1) Cr.P.C., learned Additional City Magistrate has admitted the possession of petitioner No. 1. Thus there was no disputed regarding possession before learned Additional City Magistrate and there was no occasion for him to pass an order u/s 146(1) Cr.P.C. attaching the property. Mere apprehension of breach of peace is not sufficient to initiate proceedings under Sections 145 and 146(1) Cr.P.C. In view of the aforesaid decision of the Apex Court, the proceedings under Sections 145 and 146(1) Cr.P.C. as well as attachment order were simply abuse of process of the Court. The impugned orders cannot be sustained and are liable to be quashed.

Writ petition is allowed.

The entire proceedings u/s 145 Cr.P.C. including orders dated 22.12.2012 under Sections 145(1) and 146(1) Cr.P.C. passed by Additional City Magistrate-III, Allahabad as well as order dated 18.2.2013 passed by Additional Sessions Judge, Ex-cadre, Court No. 20, Allahabad are quashed. Learned Additional City Magistrate is directed to restore the possession of property in dispute to the petitioners from whose possession the property was attached.