
(1949) 05 P&H CK 0004
In the Punjab And Haryana At Chandigarh

Sita Ram	Vs	APPELLANT
The Crown		RESPONDENT

Date of Decision : 12-05-1949

Acts Referred:

Citation : (1949) 05 P&H CK 0004

Hon'ble Judges : Harnam Singh, J.

Bench : Single Bench

Judgement

Harnam Singh, J.—Sitaram applies Under Section 435, Criminal P.C. for the revision of the order passed by Shri K. C, Grover, Magistrate 1st class, Amritsar on 21st August 1948.

2. The facts, so far as material, are that a building consisting of a temple, shops, a hall and a chaubara situate in Katra Nihal Singh Atta Mandi, Amritsar, belongs to the Panchayat Shikarpuri Biradri, hereinafter referred to as the applicant. The allegations are that the hall and the chaubara were given for three days by the applicant to Sitaram on 22nd February 1948 for use on the occasion of the marriage of his daughter. Indeed, the case states that Mela Bam made an application to the Panchayat on 20th February 1948 on behalf of Sita Ram for the reservation of the hall and the chaubara for three days between 23rd February to 25th February 1948 for use on occasion of the marriage of the daughter of Sita Earn and that the possession of the hall and the chaubara was made over to Sita Earn on 22nd February 1948. It is stated that Sita Earn has returned the possession of the hall to the applicant but has refused to return the possession of the chaubara. He was asked by Mela Bam and the Shikarpuri Biradri to vacate the chaubara, but he became rowdy and apprehending imminent breach of the peace the matter was reported to the police by Mela Earn, vide Ex. p. J., on 11th April 1948. The police has, thereupon initiated proceedings against Sita Bam Under Section 145, Criminal P.C. and this petition has arisen out of those proceedings.

3. Now, on 12th April 1948, Mr. F. C. Grover, Magistrate 1st class, Amritsar,

taking action Under Section 145, Criminal P.C. passed the order:

Let the chaubara in dispute be attached till decision as to which party was in actual possession of such chaufara. From the police report I find that there is likely a breach of the peace and I consider it expedient that the disputed property be attached till the decision by this Court. Notice to the parties to this effect to issue to appear on 16th April 1948. In pursuance of this order warrants for the attachment of the chaubara were issued on the same day and the chaubara in question was attached by locking the room. Another warrant of attachment was issued on 15th April 1948 for the attachment of the courtyard in front of the chaubara and the courtyard was likewise attached on 15th April 1948.

4. Sita Bam put in his written statement on 1st May 1948, He denied the correctness of the allegations made against him and pleaded that the temple was originally owned by Bawa Hari Pas who made a will concerning the temple on 31st January 1897 in favour of Godhu Mai and his brother, putting Godhu Mai and his brother in possession of the temple and appointing them as managers thereof. He added that the chaubara was put up 20/22 years ago since when he has been in possession of that chaubara. He contends that there was no imminent danger of the breach of the peace between the parties.

5. The case of Sita Earn at the trial was that he did not obtain possession of the chaubara on the marriage of his daughter, for the chaubara had been in his possession for the last 20/22 years.

6. Now, on the evidence produced by the parties, the trial Court has found :

From the summary of the evidence given above it is proved beyond doubt that the suit property belonged to SWkarpuria Society and the Society has been in charge of the management of the property and has been in possession of the property. It is further clear and has been admitted by some of the defence witnesses that Sita Earn respondent got into it at the time of the marriage of his daughter with the permission of the Managing Body and that he being of a doubtful character has asserted his title over it. It is further clear that he has refused to vacate it on being asked to do so and that he is out to commit a breach of the peace. The possession of Sita Earn is unlawful and he has, therefore, no right to retain it. 7. As stated above Sita Bam denied that Mela Earn had any authority from him to make application, Ex. P-B. on his behalf. Again a perusal of Ex, P-B. shows that this application has no reference to the chaubara but relates merely to the reservation for three days of the hall of the Shikarpur Biradri Dharamsala.

8. Now, the jurisdiction of a Magistrate to initiate proceedings Under Section 145 arises on his being satisfied that there is a dispute concerning land or water or the boundaries thereof, and that such a dispute is likely to cause a breach of the peace. Again, the object of the order Under Section 145 (1) is to give the persons concerned in the dispute a notice that the Magistrate is taking action Under Section 145 to prevent a breach of the peace and to provide them opportunities

to prove their claims before him so as to enable him to decide which of the parties was in possession of the property at the date of the preliminary order.

9. Counsel contends that the preliminary order Under Section 145 (1) passed on 12th April 1948 does not satisfy the requirements of Section 145 (1).

10. The order in question states that from the police report it appears that there is a likelihood of the breach of the peace and that the dispute relates to the actual possession of the chaubara. There is a direction in the order that notice will go to the parties informing them of the attachment of the chaubara and requiring them to appear on 16th April 1913, but no direction was given to the parties to put in written statements of their claims in respect of actual possession of the subject-matter of dispute. The matter need not be pursued further, for the rule in such cases is that where there is a preliminary order the fact that it is not complete in some respects is not sufficient to vitiate the proceedings.

11. Counsel next contends that on the allegations made by the applicant, the Magistrate had no jurisdiction to proceed in the matter. The argument raised is that the Magistrate has to decide on enquiry and to give a finding as to whether any and which of the parties was in possession of the property in dispute at the date of the preliminary order. The only exception to this rule is the case where one of the parties has been forcibly and wrongfully dispossessed within two months of the date of the order in which case the Magistrate is to treat such person as having been in possession at the date of the preliminary order under the proviso to sub.s. (i). Except as provided by this proviso, the Magistrate is not concerned with the previous possession or with the question as to how the possession was obtained, though he may take these facts into consideration in deciding the question of possession at the date of the preliminary order.

12. Now, admittedly Sita Ram was in actual possession of the chaubara on 12th April 1948 when the preliminary order was passed and there was no allegation that the applicant had been forcibly and wrongfully dispossessed within two months of the date of the order. In such cases the Magistrate has no power to decide who should be in possession of the property in future without reference to possession at the date of the preliminary order. Section 145 (6) provides:

If the Magistrate decides that one of the parties was or should under the first proviso to Sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law and forbidding all disturbance of possession until such eviction, and when he proceeds under the first proviso to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed. As stated above, Sita Ram was in actual possession of the chaubara on the date of the preliminary order and the case did not fall within the first proviso to Sub-section (4) and that being so the Magistrate was not competent to restore to possession the Panchayat Shikarpuri Biradri for the Panchayat Shikarpuri Biradri had not been forcibly and wrongfully dispossessed

within two months of the making of the preliminary order.

13. For the foregoing reasons I find that the order of the Magistrate restoring the Panchayat Shikarpuri Biradri to possession of the chaubara in dispute is not sustainable in law.

14. Counsel for the respondent urges that the powers of revision in criminal matters are not given to the High Court so that it may interfere in every case in which a question of law arises. He argues that the High Court has an absolute discretion Under Section 435 and 439, Criminal P.C. to interfere in revision in any case, but that discretion ought only to be exercised in order to prevent substantial injustice, or, where there is involved a point of law of general importance which may govern other cases. He cites Emperor v. Shrirang Jayaba Vichare 141 I. C. 339 : A.I.R.1932 Bom. 637: 34 Cri L.J. 142; Sher Singh v. Jitendranath Sen 59 Cal. 276: A.I.R. 1931 Gal. 607 : 33 Cri.L.J. 3 and Giani and Ors. v. The Crown 1936-38 P. L. Rule 332 : A.I.R. 1936 Lah. 1015 : 88 Or. L J. 123. The argument raised is that even if an illegality more than irregularity is committed by the trial Court in passing an order Under Section 145, Criminal P.C., the High Court has discretion to refuse to interfere in revision if substantial justice has been done.

15. Counsel for the respondent points out that Sita Earn obtained possession of the chaubara by fraud and that being so, there is no justification for interference in these proceedings. As stated above, admittedly the Panchayat Shikar, puri Biradri was not wrongfully and forcibly dispossessed so as to bring the case within the first proviso to Sub-section (4) of Section 145 which requires that dispossession should be forcible and wrongful. The argument assumes that Sita Ram obtained possession of the chaubara on 22nd February 1948 on the basis of application, Ex. p.-B. But as pointed out above, Ex. p.d, does not relate to the chaubara in question. Sita Earn may have obtained possession of the hall on 22nd February 1948 on the foot of application Ex. P,-B. but the possession of the hall has been returned to the Biradri and there is no longer any dispute concerning the possession of that hall. There is, therefore, no substance in the point raised by the counsel for the respondent.

16. For all these reasons, I set aside the order passed by Shri K. C. Grover, Magistrate first class, Amritsar on 21st August 1948 and direct that Sita Earn may be put in possession of the chaubara in dispute and he shall be entitled to possession thereof until evicted there, from in due course of law and the Panchayat Shikarpur Biradri is forbidden to interfere in such possession until such eviction.