
(1984) 02 CAL CK 0015
In the Calcutta High Court
Case No : Criminal Rev. No. 2013 of 1980

S.K. Daman Mistry

APPELLANT

Vs

Moharrum Mistry and Another

RESPONDENT

Date of Decision : 27-02-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 146, 146(1)

Citation : 88 CWN 629

Hon'ble Judges : J.N. Chaudhuri, J

Bench : Single Bench

Advocate : Bidyut Kr. Banerjee, for the Appellant; Sukumar Guha and Bidhan Ch. Ghosal, for the Respondent

Judgement

Jitendra Nath Chaudhuri, J.—This application (Criminal Revision No. 2013 of 1980) is directed against an order dated 13.11.1980 passed by the learned Executive Magistrate, Purulia in Misc. Case No. 263 of 1980, whereby he refused the prayer of the petitioner for attachment of the disputed land under Sec. 146(1) Cr. P.C. On 17.9.1980, the learned Executive Magistrate, after considering a report of the Purulia Municipality, along with a sketch plan indicating the demarcations of plot nos. 14 and 14/1 of that Municipality converted proceedings u/s 144 Cr. P.C. and drew up proceedings u/s 145 Cr. P.C. against the present petitioner and the opposite parties in respect of plot no. 14/1, only, as in his view, there was a dispute over possession of this plot and there was still apprehension of breach of peace between the parties over the possession of this plot.

2. On 24.10.1980, a petition was filed by the present petitioner praying for attachment of the disputed plot no. 14/1 under Sec. 146 Cr. P.C. The learned Executive Magistrate, after seeing the petition, sent the petition to the officer-in-charge of Purulia (T) P.S. for enquiry report by 27.10.1980 and directed that in the meantime the officer-in-charge should maintain peace and the previous status. The police report in question dated 26/27.10.1980 was duly placed before

him on 28.10.1980 and he directed the same to be put up again on the date fixed up for hearing. Ultimately, after the matter had been called on 29.10.1980, and 11.11.1980, on 13.11.80, the learned Executive Magistrate passed the impugned order. The relevant part of the order reads as follows :--

.....Both parties present. Heard learned Lawyers of both the parties. I am satisfied that there is no immediate apprehension of serious breach of peace between the two parties and that there does not exist any condition of emergency. Therefore the prayer of the 1st party for attachment of the disputed land u/s. 146(1) Cr. P.C. is rejected.....

3. The rest of the order deals with the question of expediting the final hearing of the application u/s 145 Cr. P.C.

4. On the application of the petitioner for attachment u/s 146 Cr.P.C., the learned Executive Magistrate felt it necessary to get a report from the Officer-in-Charge concerned and in fact, that report was before him on 13.11.80 when he passed the impugned order. From that report it is clear that in so far as the report went, both the parties were desperate and dangerous in nature and that there was every chance of the breach of peace and even blood-shed over the issue.

5. As will be apparent on a reading of the impugned order dated 13.11.1980, the learned Executive Magistrate did not at all consider the said police report, after having called for the same. In fact, there does not seem to be any material on which he based his observation that he was satisfied that there was no imminent apprehension of serious breach of peace between the parties - and that there did not exist any condition of emergency. In fact, on a plain reading of the report of the O.C. and the endorsement of presumably higher officer on the said report, it will appear that the position was just the reverse. It is not as if the learned Magistrate has noted any material showing that the condition has changed since the date of the report and the date of the impugned order made by him. In fact, there appears to be a total non-application of mind towards the material, namely, the police report which had been called for by him and was before him on that date.

6. Learned Advocate appearing on behalf of the opposite parties on my pointing out this fact, namely, that the police report had not been considered at all and that the impugned order did not disclose the material on which the learned Magistrate could have come to the conclusion to which he did, has very fairly conceded that in fact the impugned order is silent on that score. He, however, has urged that since a licence appears to have been given by the Municipality in favour of the opposite parties, as would appear from the report of the said Municipality, which was considered by the learned Executive Magistrate on 17.9.80, possession would appear to be with the opposite parties on the face of it.

7. Having considered the arguments of the learned Advocates appearing for both the parties, I am of the view that the impugned order dated 13.11.1980 cannot

be allowed to stand, as the same appears to be not found on any material before the Court and appears to have been passed erroneously without considering the said police report on record. I wish to make it clear that I make no observations as to what would be the proper order upon a consideration of the said report, but I am inclined to set aside the impugned order dated 13.11.1980 because of the failure of the learned Executive Magistrate to consider the materials before him.

8. The impugned order dated 13.11.80 in so far as it relates to the rejection of the prayer of the present petitioner for attachment of the disputed land under Sec. 146(1) Cr. P.C. is set aside. The rest of the said order dated 13.11.80 in so far as it relates to Sec. 145 Cr. P.C. is not set aside. The matter is remanded back to the learned Executive Magistrate for decision on the question as to whether the prayer for attachment of the disputed land under Sec. 146(1) Cr. P.C. of the petitioner should be allowed or not. The learned Executive Magistrate will dispose of this matter on a consideration of all available materials before him including the said police report dated 26/27.10.80. He will also give both sides an opportunity of making their submissions and since a considerable time has elapsed since the date of the impugned order, he will also consider any other relevant material which the parties wish to place before him before passing any order on the said prayer of the petitioner under Sec. 146(1) Cr. P.C. The said application should be disposed of within two months of the receipt of the records, if not otherwise impossible.

9. The matter should be placed, if possible, before a learned Executive Magistrate other than the learned Executive Magistrate who passed the impugned order dated 13.11.80. The Rule is accordingly made absolute. The records should be sent down forthwith.

Learned Advocate for the petitioner is given liberty to correct the cause title and the body of the petition by correcting the date of the impugned order from 18.11.80 as wrongly set out, to 13.11.1980, on the prayer of the learned Advocate.