
(1989) 04 CAL CK 0020
In the Calcutta High Court
Case No : C.R. No. 1730 of 1988

Sm. Lalmati Debi

APPELLANT

Vs

The Executive Officer, Salanpur Panchayat Samity

RESPONDENT

Date of Decision : 04-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 143, 144, 145

Citation : 94 CWN 316

Hon'ble Judges : S.P. Das Ghosh, J

Bench : Single Bench

Advocate : Biman Kanti Basu and Syed Nurul Hossain, for the Appellant; Tapan Dutta Gupta for State and N.R. Adhikari, Subrata Ganguly and Aloke Chakraborty, for the Respondent

Judgement

S.P. Das Ghosh, J.—Heard the learned Advocates for the parties. By the impugned order dated 7/11/88 the learned Sub-divisional Magistrate, Asansol, has filed a case under sections 144/145 Cr.P.C. The learned Magistrate is not, however, entitled to file a case u/s 145 Cr. P.C. in the manner done by him.

2. It appears that in respect of plots nos. 9 and 41 of Mouza Achra, measuring 2.62 acres, the petitioner's husband Sew Ballak Mahata, was declared as "Bargadar" by the Bhagchas Officer, Salanpur on 20/4/78. It further appears that in an earlier proceeding u/s 145 Cr. P.C. at the instance of the petitioner against the deceased opposite party no. 2, Nitya Tewary and others, it was decided that the petitioner was in possession of these plots nos. 9 and 41 of Mouza Achra as well as Plot Nos. 220 and 220/666 of Mouza Rangametia, measuring 2.79 acres. That order was after sale by Chhajurarn Ladia to the opposite parties- nos. 3 and 4 on 20/2/79 in respect of 4 annas share in plots nos. 9 and 41 of Mouza Achra and the entire plots nos. 220 and 220/666 of Mouza Rangametia. After this sale by Chhajuram Ladia to the opposite parties nos. 3 and 4 the petitioner brought the proceeding u/s 145 Cr.P.C. in which the aforesaid order dated 23/4/85 was passed declaring possession of the petitioner in the entire plots nos. and 41 of

Mouza Achar and the entire Plots Nos. 220 and 220/666 of Mouza Rangametia. Subsequently on 25/6/87, four deeds of transfer were executed in favour of the opposite party no. 7, Salanpur Panchayat Samity. After the execution of these deeds of transfer, there was again alleged interference with the petitioner's possession of these lands. The petitioner filed a second petition u/s 144/145 Cr.P.C. in the court of the Sub-Divisional magistrate at Asansol. On 1/11/88, the learned Magistrate directed the O.C. Salanpur P.S. for enquiry and report. The J.L.R.O. Salanpur, was also directed to enquire and report. The learned Magistrate directed for maintenance of peace and status quo in the meantime. Subsequently on 7/11/88, after receipt of report of the O.C. Rupnarayanpur P.S. the learned Magistrate passed the impugned order, filing the case under sections 144/145 Cr.P.C. on the ground that it appeared that the Executive Officer of Salanpur P.S. was in possession of the plot and that the petitioner was trying to create disturbance.

3. A case under sections 144/145 Cr.P.C. cannot be filed in the manner, as done by the learned Magistrate. The learned Magistrate did not say as to whether the case before him was u/s 144 or u/s 143 Cr.P.C. Once a petition is filed before a Magistrate u/s 145 Cr.P.C. the learned Magistrate is to be satisfied about the possibility of breach of the peace and if so satisfied about the possibility of breach of the peace, concerning a dispute relating to any land or water or the boundaries thereof, the learned Magistrate is to make an order in writing stating the grounds of being so satisfied and requiring the parties concerned in such dispute to put in written statements of their respective claims. Thereafter, without reference to the merits of the claims of any of the parties to a right to possess the subject of dispute, he learned Magistrate is to peruse the written statements of the respective claims, as filed by the parties, hear the parties, record evidence to be adduced by the parties and thereafter to come to a finding about possession of any of the parties. In this case, the learned Magistrate had himself observed that the first party was trying to create disturbance. When the learned Magistrate had the satisfaction of likelihood of breach of the peace due to attempts of the first party to create disturbance, the learned Magistrate ought to have drawn a proceeding u/s 145 Cr. P.C. and to ask the parties to put in written statements for their respective claims and thereafter he ought to have proceeded with the case in accordance with law, as laid down in section 145 Cr. P.C. Instead of doing that, the learned Magistrate was not justified in filing the case under sections 144/145 Cr. P.C. without deciding also as to whether the case before him was u/s 144 or u/s 145 Cr. P.C.

4. The Advocate for the petitioner, has drawn my attention to the decision of the Supreme Court in the case of Bhinka and Others Vs. Charan Singh, and has contended that when the previous order u/s 145 Cr. P.C. as passed in the earlier proceeding on 23/4/85, stands and as that order is contemninious with the decree of a Civil Court, the opposite parties are not entitled to interfere with the possession of the petitioner in the four plots in the two mouzas. According to the learned Advocate, the transfer of plots no. 220 and 220/666 to the Salanpur

Panchayat Samity is subject to this order dated 23/4/85 in the previous proceeding u/s 145 Cr. P.C. and the opposite party no. 7 or any of the other opposite parties cannot interfere with the possession of the petitioner in these two plots of Mouza Rangametia or in the other two plots in the Mouza Achar, unless there is a decision by civil court to the contrary. This contention of the learned Advocate for the petitioner cannot be accepted. An order u/s 145 Cr. P.C. is, after all, as stated by the Supreme Court in the case of Bhinka (supra) is a police order. It decides no question of title. Unless set aside by the civil court to unless found otherwise in a subsequent proceeding u/s 145 Cr. P.C. the previous order dated 23/4/85 will hold the ground. There is, however, no bar for the learned Magistrate deciding anew the question of present possession of the two plots of Mouza Achar or the two plots of Mouza Rangametia, after inviting written statements, of the respective claims from the parties and recording evidence of both the parties in the matter. In that view of the matter, the learned Magistrate is to be directed to proceed with the case u/s 145 Cr. P.C. (by treating the petition under sections 144/145 Cr. P.C. as one u/s 145 Cr. P.C. in accordance with law after inviting written statements of the respective claims from the parties and recording evidence to be adduced by the parties. The impugned order dated 7/11/88 is, accordingly set aside. The learned Magistrate is directed to treat the petition filed by the petitioner under sections 144/145 Cr. P.C. as a petition u/s 145 Cr. P.C. and is also directed to ask the parties to put in written statements of their respective claims and thereafter to proceed with the case u/s 145 Cr. P.C. in accordance with law. The learned Magistrate will try to dispose of the case within three months of the communication of this order to the court of the learned Magistrate.

The revisional application is, accordingly, disposed.