
(1981) 03 KAR CK 0037

In the Karnataka High Court

Case No : Criminal Revision Petition No. 508 of 1980

Somappa Ningappa Vader and Others

APPELLANT

Vs

Taluka Executive Magistrate, Raibag and Others

RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 146 (1), 274

Citation : (1981) ILR (Kar) 854

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Advocate : B.V. Heddur Shetty, for the Appellant; S.K. Joshi, for the Respondent

Judgement

1. This petition is directed against the order dated 10-10-80, passed by the Taluka Executive Magistrate, Raibag, in Case No. MAG/SR-3.A, u/s 146 of the Cr.P.C., after concluding that he was unable to decide as to which of the two parties was in possession of the disputed property. The petitioners were the members of party No. I before the Executive Magistrate.

2. The learned Taluka Executive Magistrate has narrated in the impugned order that he held enquiry u/s 145 of the Cr.P.C., made spot inspection and at that time the parties and their Advocates were present and at the very time the Sub-Inspector of Police, Kudachi, filed a report that there was every possibility of imminent breach of peace and that he enquired with the neighbouring landholders. He has, after narrating as aforementioned, concluded that in view of the material gathered by him he was unable to satisfy himself as to which of the two parties was in possession of the subject of dispute and, therefore, thought it fit to pass an order u/s 146(1) of the Criminal P.C.

3. Section 145(4) of the Cr.P.C. provides for enquiry. It further states that the Magistrate holding an enquiry should peruse the statements put in by the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and if possible, decide whether any and

which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute.

4. The mode and method of hearing the parties and receiving such evidence and taking further evidence, is provided specifically in Section 274 of the Cr.P.C., which reads as follows :

"274. Record in Summons-Cases and Inquiries :-

(1) In all summons-cases tried before a Magistrate, in all inquiries under Ss. 145 to 148 (both inclusive), and in all proceedings u/s 446 otherwise than in the course of trial, Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of his evidence in the language of the Court :

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the Record."

Plain reading of the above provisions, shows that it is mandatory of the Magistrate holding an enquiry u/s 145 of the Criminal P.C., to make a memorandum of the substance of the evidence given by each witness as and when the evidence proceeds and if he is unable, to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing from his dictation in open Court. The records maintained by the Taluka Executive Magistrate are available. No such memorandum of the substance of the evidence of any of the parties or the witnesses, is available in the records. Not even the statements of the alleged neighbouring landholders are available. Therefore, it is clear that the enquiry conducted by the Taluka Executive Magistrate is not in accordance with the mandatory provisions of law and as such the proceeding is vitiated.

5. In the result, this petition is allowed and the impugned order dated 10-10-1980 passed by the Taluka Executive Magistrate, Raibag, in Case No. MAG/SR-3.A, is set aside. The Magistrate is directed to hold a proper enquiry as contemplated by law and as narrated in the body of this order on receipt of the records of this case, and dispose of the case as early as possible.

6. Revision allowed.