

(1998) 01 RAJ CK 0052

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 8 of 1998

Soorajmal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 147, 148, 148(1)

Citation : (1998) CriLJ 1515 : (1998) 2 RCR(Criminal) 561 : (1998) 1 RLW 407 : (1998) 3 WLC 138

Hon'ble Judges : Amaresh Kumar Singh, J

Bench : Single Bench

Advocate : Sunil Mehta, for the Appellant;

Judgement

Amaresh Ku. Singh, J.—Heard the learned counsel for the petitioners.

2. By this petition u/s 482 Cr.P.C. it is prayed that the order dated 4-11-1997 passed by the learned Additional Sessions Judge No. 1, Jodhpur in criminal revision No. 12/97 and the order dated 5-8-1997 passed by the learned S.D.M., Jodhpur in criminal case No. 234/96 State v. Soorajmal and another be quashed and set aside.

3. By the above mentioned order dated 5-8-1997 passed by the learned S.D.M., the application filed by the petitioners u/s 148 Cr.P.C. was rejected. The order dated 5-8-1997 of the learned S.D.M. was upheld by the learned Additional Sessions Judge and the revision petition filed by the petitioners was dismissed.

4. Section 148(1) Cr.P.C. provides that:

Whenever a local inquiry is necessary for the purpose of Section 145, Section 146 or Section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Section 148(2) provides that:

The report of the person so deputed may be read as evidence in the case.

Section 148(3) provides that:

when any costs have been incurred by any party to a proceeding u/s 145, Section 146 or Section 147, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable.

A bare perusal of Section 148 Cr.P.C. shows that this Section 148 does not confer any right on any party to insist that a subordinate Magistrate should be appointed for the purpose of conducting inquiry in the matter. The provisions contained in this Section enable the District Magistrate and the S.D.M. to depute a Magistrate subordinate to them, if it is considered necessary to do so. The reasons for enacting Section 148 Cr.P.C. appears to be to enable the District Magistrate and the S.D.M. to obtain the services of Magistrate subordinate to them for the purpose of conducting inquiry and submitting report u/s 148(2) Cr.P.C., if on account of the exigencies of their office they cannot find enough time to conduct inquiry themselves in those cases where the District Magistrate and the S.D.M. deem it fit to conduct inquiry themselves. There is nothing in Section 148 Cr.P.C. to justify the conclusion that the parties have a right to insist that inquiry should be entrusted to subordinate Magistrate. Under the Criminal Procedure Code 1973 all Executive Magistrate belong to one category. They "can exercise all the powers which are conferred on Executive Magistrate under the Criminal Procedure Code and, therefore, every subordinate Magistrate should be deemed to be equal in performing functions of the Executive Magistrate.

5. Since the learned S.D.M. was of the opinion that it was not necessary for him to make order u/s 148 Cr.P.C. no statutory right is vested in the complainant-petitioner to insist that he must make an order u/s 148 Cr.P.C.

6. For reasons mentioned above there is no justification for entertaining this petition u/s 482 Cr.P.C. It deserves to be dismissed and is hereby dismissed at the admission stage.

The learned counsel for the petitioner has submitted that during the inquiry which is conducted by the learned S.D.M. Local inspection of the disputed land must become necessary. The parties may apply to the learned S.D.M. at appropriate stage to make local inspection and if such application is moved it shall be considered and disposed of in accordance with the law. Nothing contained in this order shall prevent the learned S.D.M. from making the local inspection if it is otherwise necessary for the just decision of the case pending before him.

The petition is disposed of accordingly. A copy of the order be sent to the learned

S.D.M., Jodhpur for, information and necessary action.