

(1992) 01 AHC CK 0039

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 369 of 1991

Sri Mahabirji Mandir Committee

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 09-01-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 144, 145, 145(1)

Citation : (1993) CriLJ 2132

Hon'ble Judges : D.K. Trivedi, J

Bench : Single Bench

Advocate : A.B. Mathur, D.S. Mishra and A.K. Bajpeye, for the Appellant; R.C. Gupta, R.K. Trivedi, Vishwamohni and Vimal Kumar, for the Respondent

Final Decision : Allowed

Judgement

D.K. Trivedi, J.—Sri Mahabirji Mandir Committee, Aminabad Park, Lucknow, through its General Secretary Ashok Kumar Pathak, Petitioner through this petition u/s 482, Cr. P. C. initiated against him vide Annexure 3 on the ground that the Magistrate had no jurisdiction to initiate the proceedings u/s 145, Cr. P. C. specially when the fact of possession of the petitioner was not disputed and further that the Civil Court being seized of the matter to resort to these proceedings was not justified and is abuse of the process of law.

2. The brief facts of the case as disclosed in the application moved by opposite party No. 2 Devendra Lal Shah before the Magistrate contained in Annexure 3 are that the temple known as Mahabirji Temple is an old temple and it was being managed by a committee of respectable persons. It is also alleged that the petitioner Ashok Kumar Pathak had constituted a certain committee and the question of validity of the said committee has been challenged before the Registrar of Societies which is still pending before the Registrar. It is alleged that Pathak family has been using the temple as their property and no proper accounts are being maintained. It is further alleged that the offerings on the deities are being taken by Ashok Pathak for his personal use. From the perusal of

this application it appears that the petitioner Committee is in possession of the Mandir but they are misusing the accounts. On this application a police report was called by the City Magistrate, Lucknow. The police submitted its report on 4-7-1991 and according to the police report also Pathak family are using the Mandir premises and they have got their committee registered. The Police further pointed out in its report that on 2-7-1991 one Bachanu Sonker was killed in the Mandir premises over a dispute relating to the recovery of rents of its shops. According to the Police the petitioner committee is illegal and there is dispute between the petitioner committee as well as the committee headed by one Mitra Sen. On receipt of this police report the City Magistrate, Lucknow, passed an order u/s 145(1), Cr. P. C. holding that there existed a dispute about possession of the temple and the offerings and income from the shops. In the said order notices were directed to be issued and the next date was fixed as 22-7-1991. The order passed by the City Magistrate is contained in Annexure 1. It appears that the police again on 7-7-1991 submitted a report that one Raj Kumar Sonkar was killed on 2-7-1991 in front of the Mahabirji temple. The Police further pointed out that this murder was committed because there was a dispute about the ownership of the temple. The police, therefore, made a request that the temple be attached u/s 146, Cr. P. C. to prevent breach of the peace. The Magistrate on receipt of this report passed an order u/s 146, Cr. P. C. attaching the temple and appointing Tahsildar Sadar as Receiver of the temple. The order dated 7-7-1991 is Annexure 2 to this petition. The petitioner on coming to know of this order challenged the order dated 4-7-1991 and 7-7-1991 contained in Annexures 1 and 2 and further prayed for quashing of these proceedings on the ground that the Magistrate committed an error in passing the order u/s 145(1), Cr. P. C. and thereafter the order u/s 146, Cr. P. C. attaching the temple and appointing Tahsildar as receiver of the temple.

3. The main ground of attack is that from the perusal of the application moved for initiating the proceedings u/s 145, Cr. P. C. by opposite party No. 2 itself shows possession of the petitioner committee which was a registered society, therefore, there is no dispute about possession of the temple. The learned counsel further pointed out that admittedly Civil Suit No. 12 of 1991 is pending before the Civil Judge, Lucknow for declaration and injunction, therefore the Magistrate was not justified for initiating the proceedings u/s 145, Cr. P. C. It is also not disputed that Mahabirji Temple was being managed by a society and it appears that the petitioner's society was in possession and Managing the affairs of the temple. The said society is also registered under the Societies Registration Act and the dispute raised by opposite party No. 2 about registration of the petitioner committee was also finally disposed of by the Registrar of Societies holding that the petitioner committee is the valid society. He further pointed out that opposite party No. 2 also moved an application for interim injunction as well as for appointment of Receiver before the Civil Judge, Lucknow, but the same were rejected. The petitioner has also filed two letters of the Assistant Registrar of Societies showing that the allegations made against the petitioner's society by

opposite party No. 2 were not accepted by the Registrar of Firms, Societies and Chits, Uttar Pradesh, Lucknow. The said letters are contained in Annexures 7 and 8. The petitioner also filed copy of the plaint in Regular Suit No. 12 of 1991 as Annexure 9. In the plaint it is not disputed that the temple was being managed by the petitioner and in para 6 it is stated that Ashok Kumar Pathak, the present General Secretary, usurped moveable and Immoveable property of the previous management committee by forming a new management committee with the name and design of Mahabir Ji Mandir Committee, Aminabad Park, Lucknow and in collusive manner they got the same registered on 20-8-1986. It is also not disputed that Krishna Kant was the Head Pujari of the said temple. It is further alleged in para 9 that the petitioner committee is misusing its position and has misappropriated funds of the said temple. On the basis of these allegations as well as admissions it is alleged by the petitioner's counsel that initiation of proceedings u/s 145, Cr. P. C. is not justified.

4. In order to appreciate the legal aspect of the case the provisions of Section 145, Cr. P. C. are necessary to be quoted. It is needless to say that a duty is cast on the Executive Magistrate to act in emergent situation and to exercise in public interest the power to prevent breach of the peace under the provisions of the Code, like Sections 107/116, 144 and 145, Cr. P. C. No doubt all the proceedings including the proceedings u/s 145, Cr. P. C. are summary in nature but in every case the Magistrate has to act in a judicial manner and exercise his power strictly within the four corners of the Code. In this case it is the duty of the Magistrate to decide first the ambit of his jurisdiction and thereafter take a decision as to what provision in the particular facts and circumstances of the case can be invoked by him to preserve the peace and public tranquillity. The relevant provisions of Section 145, Cr. P. C. are as follows : --

145. Procedure where dispute concerning land or water is likely to cause breach of peace.--

(1) Wherever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) to (3)....

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear 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.

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under Sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed, and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the 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 such possession until such eviction; and when he proceeds under the proviso to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) the order made under this Sub-section shall be served and published in the manner laid down in Sub-section (3).

(7), (8), (9) and (10)....

From the bare perusal of Section 145, Cr. P. C. it is clear that the jurisdiction to initiate proceedings u/s 145, Cr. P. C. arises in case only when there is a dispute about actual possession of any Immovable property which is likely to lead to the breach of the peace. In my opinion for initiation of proceedings u/s 145, Cr. P. C. it is necessary that both the parties must disagree on the question of actual possession or claim possession within two months of the preliminary order. On the other hand in my opinion proceedings u/s 145, Cr. P. C. cannot be initiated e.g. if one party admits the other party's possession on the property in dispute then in these circumstances the Magistrate should not initiate proceedings u/s 145, Cr. P. C. If the question of possession is not in dispute but the Magistrate finds that there is danger of the breach of the peace then the proper course is to take action u/s 107/116, Cr. P. C. Thus, what is necessary to give jurisdiction to the Magistrate to act u/s 145, Cr. P. C. is the fact that there must be a dispute in respect of actual possession of the property in dispute. Similarly, if the claim is vague or if from the perusal of the application for initiation of proceedings u/s 145, Cr. P. C. it is proved that there is no dispute in respect of possession or if it appears that one party is in possession of the property in dispute from a very long time then in these circumstances the Magistrate has no jurisdiction to initiate the proceedings u/s 145, Cr. P. C. In the case of *Makhan Lal Raina v.*

Addl. City Magistrate, Lucknow 1989 LCD 143, this Court in similar circumstances quashed the order holding that the proceedings u/s 145, Cr. P. C. should not have been initiated because admittedly the first party was in possession of the property in dispute. In the instant case from the perusal of the application (Annexure 3) it is clear that the petitioner is in possession of the temple and is managing the affairs of the temple for a very long time i.e. 1986. One important paragraph of this application is quoted here : --

PATHAK PARIVAR MANDIR KO APNI NIJI SAMPATTI SAMAJHNE LAGE HAI AUR MANDIR COMMITTEE KE KARALAY KO APNA RAHAESHI MAKAN BANA LIYA HAI JAHAN ANAITIK TATHA ASAMAJIK KARYA HOTE HAIN JIS SE MANDIR KI GARIMA GIR RAHI HAI. PATHAK KE PARIWAR DUWARA MANDIR PARISAR ME KIYE JA RAHE ANAITIK KARYON SE SAMMANIT NAGRIKON MEN BHARI ROSH KAPT HAI. COMMITTEE DUWARA MANA KIYE JANE PAR BHI BANDUK KE BAI PAR ZABARDASTI MANDIR PARISAR KA DURUPYOG KAR RAHE HAIN AUR MANA KARNE PAR BHI NAHIN MAN RAHE HAIN.

The police submitted its report stating that there is a dispute between the two committees and according to the police one Mitra Sen Committee was the valid committee and petitioner committee is not a valid committee. It is not disputed that the petitioner committee is a registered one and is also managing the affairs of the temple for the last several years. From the perusal of the application as a whole it appears that the petitioner is in possession of the temple and is managing the affairs of the temple at least from 1986. Apart from this it is also not disputed that opposite party No. 2 filed a suit as Secretary of Mahabirji Mandir Committee against the petitioner in which he also admitted that petitioner's Society is a registered one and is managing the affairs of the temple. According to the contents of the plaint the dispute was that the petitioner is misusing his possession and is misappropriating the funds of the said temple. It is also not disputed that Krishna Kant Pathak is head Pujari of the temple. It is also not disputed that opposite party No. 2 filed a suit for declaration and injunction before the Civil Judge, Lucknow, and also moved an application for interim injunction as well as for appointment of Receiver but the Court refused to grant ex parte orders. It is also not disputed that opposite party No. 2 also moved several applications before the higher authorities including Hon'ble Rajyapal Uttar Pradesh, Lucknow, but it appears that having failed to get any success or to oust the petitioner, opposite party No. 2 resorted to these proceedings u/s 145, Cr. P. C. with the help of police persons because in the meantime a murder of one Raj Kumar also as Bachannu Sonkar was committed within the premises of the temple nearby. In view of the facts stated above it is proved that the petitioner was in possession of the temple and was managing the affairs of the said temple for a very long time, therefore, initiation of proceedings u/s 145, Cr. P. C. in my opinion is not proper. It is settled principle of law that proceedings u/s 145, Cr. P. C. cannot be initiated so as to oust a party from actual possession of the property in dispute. There are several provisions in the Code of Criminal Procedure which authorise the Magistrate and empower him to

take action in order to prevent the breach of the peace in cases where the question of possessions was not in dispute. As pointed out above, it is the duty of the Magistrate to act judicially and carefully in deciding the forum of action and in deciding the the same the Magistrate must be careful and to see that no party takes resort to criminal proceedings u/s 145, Cr. P. C. have been initiated only to oust the petitioner from the management of the temple and nothing else.

5. Apart from this the learned counsel for the petitioner further contended that admittedly the Civil Court being seized of the matter resort to these proceedings was not justified specially when the applications for interim injunction as well as for appointment of Receiver were moved and no order were granted by the Civil Court. The present petition was listed before brother P. P. Gupta, J. who came from Allahabad and arguments of both the parties were heard and judgment was reserved on 11-11-1991. It appears that thereafter opposite party No. 2 moved an application for withdrawal of the suit before the Civil Judge, Lucknow, who by his order dated 15-11-1991 dismissed the suit as withdrawn with permission to file a fresh suit. The opposite party No. .2 thereafter filed a supplementary affidavit along with the order passed by the Civil Judge and prayed for further hearing. As brother P. P. Gupta, J. was not sitting at Lucknow, therefore, the case was released and was directed to be listed for hearing. On the basis of this withdrawal of suit learned counsel for opposite party No. 2 contended that the effect of withdrawal of suit is that no such suit was filed, therefore the present proceedings u/s 145, Cr. P. C. cannot now be dropped on the question that the matter is seized by the Civil Court, therefore, the initiation of proceedings u/s 145, Cr. P. C. is valid. I find no force in this contention, firstly, because at the time of initiation of proceedings u/s 145, Cr. P. C. the said suit was pending and in the instant ease the question is whether on the date of initiation of proceedings u/s 145, Cr. P. C. it was proper to initiate the proceedings or not. The withdrawal of suit on 15-11-1991 itself shows that the suit was withdrawn by opposite party No. 2 with mala fide intention and in order to meet the arguments of the petitioner. In any case even if we accept that the suit has been withdrawn and we will presume that no suit was filed but the fact remains that admittedly the question of possession was not in dispute, therefore, the Magistrate had no jurisdiction to initiate the proceedings u/s 145, Cr. P. C.

6. Learned counsel for opposite party No. 2 tried to challenge the maintainability of the petition u/s 482, Cr. P. C. by saying that the petitioner had no locus standi to file this petition u/s 482, Cr. P. C. because the property in dispute vests in the idol and in law the idol is the owner and in possession of the property in dispute. There is no dispute that idol is the owner and in possession of the property in dispute and even according to the petitioner the petitioner's society is only in possession of the property in dispute on behalf of the idol and is managing the affairs of the temple on behalf of the idol. The petitioner has either claimed any right nor denied the right of the idol. The petitioner's society is a registered society and is managing the affairs of the temple, therefore, in my opinion the petitioner has a right to challenge the impugned order by filing this petition.

Again it is alleged that the petitioner's society is a religious society, therefore, registration of the society of the petitioner is on the face of it not valid. The learned counsel for the opposite party No. 2 relied on the case of Md. Yunus Vs. The Inspector General of Registration and Others, The case of Mohammad Yunus is of no help to the opposite party because the question as to whether registration of petitioner's society is valid or not is not at issue in this petition, therefore, it will not be proper to say that registration of petitioner society is not valid and secondly the society was registered in 1986 and since then the said society is managing the affairs of the temple. The opposite party No. 2 neither filed a copy of the memorandum of association nor alleged anything on which ground it can be said that the registration is not valid. The learned counsel simply alleged that because the society was registered for managing the affairs of the temple, therefore, the society is for religious purposes. I am unable to accept this argument, firstly because no such point can be decided in this petition and secondly in the absence of memorandum of association it is not possible to decide the question of validity of registration of the society. It may be noted here that the Societies Registration Act permits registration of society for charitable purposes. A religious society can also be called a charitable society and religious purposes may be charitable purposes. Again, a society, of which some of the objects are charitable and some are religious but if the paramount object of it is charitable then the same can also be registered under the Societies Registration Act, therefore, in the absence of memorandum of association this point cannot be decided in these proceedings. However, if the opposite party No. 2 thinks it proper then he may initiate other proceedings in accordance with law.

7. In view of the above discussion both the impugned orders dated 4-7-1991 and 7-7-1991 contained in Annexures 1 and 2, respectively, passed by the City Magistrate, Lucknow, will have to be quashed.

8. The present petition is accordingly allowed and the impugned orders dated 4-7-1991 and 7-7-1991 contained in Annexures 1 and 2 passed by the City Magistrate, Lucknow, are hereby quashed. The proceedings of Case No. 91 of 1991, Krishna Kant Pathak and Ashok Kumar Pathak, First Party v. Sri Devendra Lal Shah, Second party, pending in the Court of the City Magistrate, Lucknow, are also hereby quashed. As pointed out above if the Magistrate finds that there is apprehension of the breach of the peace then it will be open to the learned Magistrate to take action in accordance with the provisions of the Code of Criminal Procedure indicated above. The City Magistrate is directed to release the property forthwith. There will be no order as to costs.