
(1956) 04 BOM CK 0006
In the Bombay High Court

State of Madhya Pradesh

APPELLANT

Vs

Premlal and Others

RESPONDENT

Date of Decision : 02-04-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1957) CriLJ 212

Hon'ble Judges : Kotval, J;Choudhuri, J

Bench : Division Bench

Judgement

1. This revision comes before a Division Bench upon a reference made by our learned brother Mudholkar J. by his order dated 23-1-1956. He was of the view that the question involved is of considerable importance.

2. The circumstances in which the revision arises are as follows : A challan was presented by the Lalbarra police on 16-11-54 and the Sub-Divisional Magistrate, Waraseoni, passed a preliminary order u/s 145 of the Code of Criminal Procedure against non-applicants 1 and 2 (who will be referred to hereafter as party No. 1) and the non-applicant No. 3 (who will be referred to hereafter as party No. 2). Upon the police report the Magistrate found that there was a dispute likely to cause a breach of the peace, existing between the parties.

He therefore passed the preliminary order u/s 145(1), specifying certain lands at the Village Chatera and fixed the case before him for 10-12-1954. Before that date a further application was presented to him by the counsel for party No. 2, complaining that the dispute with party no. 1 had also extended to several more fields comprising an area of about 69.15 acres. In respect of this additional area of land the learned Sub-Divisional Magistrate also came to the conclusion that an emergency existed and a breach of the peace was apprehended. He ordered the crops standing in these fields to be attached u/s 145, Sub-section (4) of the Code of Criminal Procedure. The property attached was to be released on supratnama of some independent person through the Station Officer, Lalbarra. It is this order which is the subject matter of the revision before us.

3. The learned Additional Sessions Judge who had been approached in the first instance has recommended that that order should be quashed because he was of the view that it is an essential prerequisite to any action u/s 145 of the Code of Criminal Procedure that the Magistrate should pass a preliminary order under Sub-section (1) thereof. In this view the learned Additional Sessions Judge was undoubtedly correct. But the learned Judge went on to hold that in the case of lands subsequently attached in the instant case no such pre, liminary order was passed. He relied upon the authority of Mahomed Hasham v. Mahomed Shami AIR 1919 Nag 160; Emperor v. Sis Ram AIR 1930 Lah 895 and Banka Singh and Others Vs. Gokul, and came to the conclusion that even in a case of this kind the drawing up of a formal order u/s 145, Sub-section (1), is absolutely necessary to the initiation of proceedings under Chapter XII of the Code of Criminal procedure,

4. when the matter came up before our learned brother Mudholkar J. counsel for party No. 2 referred to a note at page 529 of Volume I of Chitaley's Code of Criminal Procedure, which questions the authority of Mahomed Hasham v. Mahomed Shami (A) (cit. sup.). Mudholkar J. also referred to Kapoor Chand and Another Vs. Suraj Prasad and Nandkishore Prasad Singh Vs. Radhakishun, , which took the contrary view.

5. On the question whether u/s 145, Sub-section (1) of the Code of Criminal Procedure a preliminary order is in the first instance a sine qua non to any subsequent proceedings there is considerable divergence of opinion among the various High Courts in India. Some High Courts have taken the view that if no such order is passed, it is an incurable illegality and all further proceedings would be null and void. The other view taken does not go so far as that but holds that though it Js a serious error, if the party complaining of that error is not shown to be prejudiced in any way the error does not vitiate the proceedings, It is this conflict of opinion which we presume induced the reference to the Division Bench.

6. In the arguments before us, however, one crucial fact has emerged and it is that in the instant case there was a specific and valid preliminary order passed in the first instance. Though the order does not bear a date the order-sheet shows that it was passed on 16-11-54. It has not been disputed before us that this order, so far as it went, was a valid and correct order which was passed. All that the learned Sub-Divisional Magistrate did thereafter was that when he found that the dispute between the parties had extended to additional land he specified that additional land as the subject of dispute within the meaning of Sub-section (1) of Section 145 of the Code of Criminal Procedure.

7. Upon these facts we are of opinion that the question whether a preliminary order is a condition precedent to further proceedings u/s 145 of the Code of Criminal Procedure does not really arise for consideration. The only question that arises is whether once a valid preliminary order is passed the Magistrate acting u/s 145 has any power to specify more property as the subject of dispute and proceed to pass orders regarding that property.

8. The revision is directed against the order dated 22-11-54, including 69.15 acres of land as the subject of the Section 145 proceedings and ordering attachment of crops standing upon that area. It is in our opinion impossible to contend that no preliminary order was passed in regard to this area. The real grievance of party No. 1 is that this area was not in the first instance specified in the preliminary order. That order is not being questioned,

9. It has been held in a number of cases that where once a valid preliminary order has been passed subsequent errors or omissions relating to procedure or to specification of property in the preliminary order do not vitiate the subsequent proceedings. The only two essential conditions, which confer jurisdiction upon a Magistrate u/s 145, are firstly that there should be a dispute over land or water and secondly that such a dispute should be likely to cause breach of the peace. Both these conditions were fulfilled in the instant case. Even if additional land was specified later on, it was, in our opinion, an error which does not affect the validity of the proceedings,

10. Quite apart from this, the party No. 1 appeared before the Sub-Divisional Magistrate subsequent to the impugned order and has now become fully aware that the proceedings before the Magistrate were also in regard to the additional property which has been specified as the subject of dispute. We are unable to see how in these circumstances he is at all prejudiced or affected by the specification of this additional property by a later order after the preliminary order was passed.

11. Where the party to a proceeding u/s 145 of the Code of Criminal Procedure knows very well the subject-matter of the dispute, an omission to clearly specify it in the preliminary order has been held to be a minor defect of proceeding. See *Ratan Singh v. Eaghubir Singh* AIR 1952 Mad 165. It would be a different matter if the property in dispute were not at all specified or specified so as to mislead the party as in the cases in *In re petition of T. A. Martin* ILR 27 All 296 and *Siv Narayan v. Satish Chandra* 24 CWN 621 : AIR 1920 Cal 344 both of which were distinguished in *Ratan Singh's* case (F) (cit, sup,).

12. In the present case, as has been shown above, the subject-matter in dispute has been specified in the clearest possible terms in the order-sheet dated 22-11-1954 and party No. 1 appeared took notice of the fact and is actively contesting the proceedings. They are therefore in no way prejudiced and we see nothing incorrect, Improper or illegal in the proceedings taken by the Magistrate.

13. The order passed by the Sub-Divisional Magistrate was correct order in the circumstances. We do not accept the reference made and dismiss the revision.