
(1966) 08 MP CK 0021
In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

Sitaram Vishwanath and Others

RESPONDENT

Date of Decision : 19-08-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(5)

Citation : (1968) CriLJ 1002 : (1968) ILR (MP) 829 : (1968) JLJ 389 : (1968) 13 MPLJ 237

Hon'ble Judges : Shiv Dayal, J

Bench : Single Bench

Judgement

Shiv Dayal, J.

The question, which has arisen in this revision, is whether a Magistrate, while dropping proceedings u/s 145(5), Criminal P.C., has jurisdiction to direct Police to hand over possession to a particular party of the property which was attached earlier u/s 145, Criminal P.C.

As far as on 26th July 1962, the Police initiated proceedings u/s 145, Criminal P.C., against Sitaram (first party) and Smt. Bhagwatibai and three others (second party) on the allegation that they were on inimical terms and there was likelihood of breach of peace. The Sub-Divisional Magistrate (City), Jabalpur, by his preliminary order dated 27th July 1962, ordered attachment of the house in dispute. In compliance with the Magistrate's order, the Police sealed the house and took it in its possession. A constable was deputed to have watch over it. The keys were deposited with the Court. There is no mention in the compliance report from whose possession the house was taken in custodia legis.

Eventually, the Magistrate made a reference to the civil Court u/s 146, Criminal P.C. Meanwhile, Smt. Bhagwatibai and four others (second party) instituted a suit in the civil Court against Sitaram for declaration of title. In that suit, the Additional District Judge, Jabalpur, passed a decree declaring Smt. Bhagwatibai to be the owner of the suit house. On the basis of that judgment dated 25th

February 1965, in Civil Suit No. 6-A of 1964, the learned Magistrate dropped the proceedings u/s 145, without awaiting the answer from the civil Court to the reference made u/s 146, Criminal P.C.

It seeing to me clear that: (1) the whole jobject and purpose of Section 145, Criminal P.C., is merely to prevent breach of the peace by maintaining in possession one or the other of the parties. The object of the section is not to afford an opportunity to the parties of bringing their civil dispute before a criminal Court. The orders under that section of the Code are merely police orders to prevent breach of the peace. (2) A proceeding under that section must not be continued when there is ample time for obtaining appropriate relief in the civil Court. (3) A proceeding u/s 145 can be dropped by the Magistrate at any stage of the enquiry as soon as he is satisfied that there no longer continues apprehension of breach of the peace. Under subs. (5) the Magistrate has power to cancel the preliminary order and drop the proceedings. (4) In that case, a party to the proceeding has no right to claim a decision on the points in dispute and to require that the proceeding should continue for that purpose. He is not in the position of a plaintiff in a civil suit.

In Bhinka and Others Vs. Charan Singh, , their Lordships considered the legal effect of an order made by the Magistrate u/s 145, Criminal P.C. It his been laid down:

The foundation of his jurisdiction is an apprehension of the breach of the peace and with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passing of a decree by n Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court.

It is true that in Section 145 of the Code there is no express provision for passing incidental orders for disposal of the attached property, when proceedings are dropped under Sub-section (6), but I am clearly of the view that the Magistrate has the power to make incidental orders u/s 517 of the Code. While cancelling the preliminary order, it will only be appropriate that the Magistrate should cancel the order of attachment as well, even though it is not "further proceedings" within the meaning of Sub-section (5). The order of attachment, if any, is passed under Sub-section (4). When the proceeding is dropped, the Magistrate may as of necessity make an incidental order to restore possession to one of the parties. In Syed Liaquet Hussain Vs. Regional Transport Authority, Lucknow, it is further observed that even apart from Section 517 of the Code, the Magistrate would have inherent jurisdiction to pass orders in the nature of winding up proceedings, restoration of status quo ante and such orders as may be necessary for preservation of the property till the rights of the parties could be determined. It seems to me that it is not necessary to invoke any inherent powers when an appropriate remedy to meet the ends of justice is well provided in Section 517 of the Cede.

This brings me to the question to which party the Magistrate should hand over possession of the attached property while cancelling the order of attachment in consequence of dropping the proceedings u/s 145(5) of the Code. The answer to this question will depend upon the circumstances of each case. Where there is material on record to show that the property was attached by the Police from the possession of a particular party, the undoubted position of the law is that the Magistrate should release the property in favour of such party. It is for the aggrieved party to file a civil suit for adjudication of his rights. In other words status quo ante must be restored. It was so held in *State v. Sheoratan Singh* ILR 1950 Nag 787 : AIR 1951 Nag 201.

But where no person is named in the memorandum of attachment, the Magistrate cannot vaguely direct the Police, to hand over possession to the person from whose possession the property was attached. When the Magistrate directs restoration of possession to a party he must specify the person to whom possession is to be delivered by the police. No evidence can be allowed to be adduced at that stage to enable him to pass an order for handing over the property to a particular party. There are some decisions where the view taken is that in such a case the Magistrate should lift the attachment simpliciter and release the property from the custodia legis without making any further order. The parties will be left to assert their rights in a civil Court. But it appears to me that such a course might give rise to a likelihood of breach of the peace. Therefore, it will only be appropriate and in the interest of maintenance of peace that the property should be retained in the custody of the Court and the parties should be directed to get their rights declared in a civil Court. This course was approved of in *Sheoratan Singh's* case ILR 1950 Nag 787 : AIR 1951 Nag 201 (supra).

However where the civil Court has decided the question of title between the parties the Magistrate must direct the Police to hand over possession of the attached property to the party in whose favour the civil Court has made a declaration of title. It is not merely a question of respecting the decision of the civil Court, but it is also in the fitness of the scheme and purpose of the law that the property must be released in favour of the party who has succeeded in the civil Court. It is ultimately the civil Court that decides the question of title and an order of the Magistrate u/s 145, Criminal P.C. is always subject to the decision of the civil Court. When there is a decree of the civil Court on the question of title, the parties are bound by it and the Magistrate cannot but make over possession to such party. This view finds support in *Jurawan v. Ramsarekh* AIR 1983 Pat 224. Also see *Gaju Pahan v. Rijhu Teli* 1966 Cri LJ 889 .

In the present case, a decree has already been passed by the civil Court declaring Mst. Bhagwati Bai to be the owner of the house in dispute. Shri Jain strenuously argues that the decree is not for possession, so that the Magistrate should not have ordered restoration of possession of the suit house in her favour. The learned Additional Sessions Judge, Jabalpur, has also taken the same view in

making this reference. He remarks that the learned Sub-Divisional Magistrate wrongly assumed the function of executing Court. In my opinion, that view cannot be accepted. When a Magistrate, while dropping proceedings u/s 145(5) Criminal P.C., directs that the possession of the property be handed over to the party whom the civil Court has declared to be its owner, the Magistrate does not execute the decree of the civil Court. He merely passes an appropriate order for disposal of the property which he had attached. When the property is in custodia legis it is not necessary to claim a decree for possession from the civil Court. When property in dispute is not in the possession of the defendant it is sufficient to get a declaration from the civil Court on the question of title; it is not necessary to claim the further relief of possession. If the order of restoration of the property in favour of the party, who has succeeded in the civil Court in getting a mere declaration, in effect, gives to that party real and effective relief, a criminal Court cannot grudge it. It is open to the aggrieved party to take recourse to appropriate remedy in the civil Court, but the Magistrate has no right to compel a party, who has obtained a declaratory decree from the civil Court, to go back to the civil Court and get another decree for possession. This view finds support in *Lal Chand v. Smt. Amrauti* 1968 Cri LJ 512 (All).

For these reasons, the order of the Magistrate was right and must be maintained. The respondent has made an application for taking, action in contempt against the revision-petitioner alleging that he has broken open a lock and seal of the house attached by the police. The applicant has denied this. The respondent's application is wanting in necessary particulars: which lock and which seal have been broken and when which portion of the property has been encroached upon? It is open to the respondent to move the Magistrate for suitable action.

The reference is rejected. The order passed by the Sub-Divisional Magistrate is maintained.