
(1997) 04 AHC CK 0106
In the Allahabad High Court
Case No : Criminal Revision No. 2562 of 1983

Surya Nath Tiwari and Ors.

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1997) 04 AHC CK 0106

Hon'ble Judges : P.K.Jain, J

Final Decision : Allowed

Judgement

P.K. Jain, J.—List has been revised.

2. None appears for the revisionist to press the revision. Heard learned A.G.A. and perused material on record.

3. The proceedings under Section 145, Cr.P.C. were initiated on 5176. During the pendency of the proceedings the learned Magistrate directed the parties to get their disputes decided by the Civil Court and in consequence of the said order a Civil Suit was filed which was pending for decision. An application for dropping the proceedings was moved by the revisionist, which was allowed by the learned Magistrate on the grounds that there was no apprehension of breach of peace, that a Civil Suit has already been filed between the parties and that the matter relates to joint property of the parties as the dispute was between the father and son with respect to joint holding. Gauri Shanker Tewari aggrieved by the order of the learned Magistrate filed a criminal revision before the Sessions Judge which was allowed on the grounds that two applications for dropping the proceedings was rejected, subsequent application should not have been allowed since after attachment of the property the parties would not have fought and according to the police report the dispute still existed. The learned Sessions Judge did not advert to the other grounds on which proceedings were dropped by the learned Magistrate.

4. It is well settled that no proceeding under Section 145, Cr P.C can be started in respect of joint holding of the parties. The learned Magistrate specifically held that under Section 145, Cr P.C partition can not be made by the Criminal Court as the Civil Suit is already pending. The order of the learned Magistrate was justified atleast on these two grounds. The learned Sessions Judge has not considered these grounds in his judgment. The judgment and order passed by the learned Sessions Judge can not be sustained. The revision is allowed. The judgment and order of the revisional Court in Criminal Revision No. 177/1982 dated 181182 is set aside and the order of the learned Magistrate is restored.

Revision allowed.