
(1968) 10 GAU CK 0001
In the Gauhati High Court

Takhellambam Tatu Singh

APPELLANT

Vs

Sorokhaibam Jugin Singh and Others

RESPONDENT

Date of Decision : 19-10-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 145, 435

Citation : AIR 1969 Guw 52 : (1969) CriLJ 985

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is a Criminal Revision Petition filed under Sections 435 and 439, Cr. P.C. against the order dated 15-6-1968 of the Additional Sessions Judge, Manipur, passed in his Criminal Revision Case No. 28 of 1967 confirming the order dated 31-5-1967 of the S.D.M., Thoubal, passed in N.F.I.R. Case No. 1 of 1967 u/s 145, Cr. P.C. who had confirmed the respondents' alleged possession of the disputed land.

2. The petitioner, who is the Pradhan of Wangoo Gram Panchayat, filed a petition on 9-1-1967 before the S. D. M., Thoubal stating that there is a vast land comprising about 100 paris in Wangoo Sapham Wangkhom, within the territorial jurisdiction of Wangoo village, of whose local Gram Panchayat, the petitioner is the Pradhan, He represented the villagers of Wangoo. They had been in possession and enjoyment of the land described in the schedule. Beyond the southern boundary of the disputed land, there is Chairen village. There is a distinct boundary line between Wangoo and Chairen villages. The disputed land was used as grass mahal under the control and management of the Forest Department of Manipur. But, the Government of Manipur de-reserved the grass mahal except a portion and the de-reserved portion is the disputed land. The petitioner and his men reclaimed the disputed land about 10 years back. A portion of it, which is the main disputed land, was de-reserved only in 1966. On 4-1-1967 at about 2-00 p. m. when the petitioner and his men were ploughing

the disputed land with a tractor, the respondents attempted to dispossess them from the disputed land. There was apprehension of breach of the peace. So, the petitioner prayed that action should be taken against the respondents u/s 107, Cr. P.C. The petitioner mentioned the boundary of the disputed land as follows:

North -- Phoubu Hiram,

South -- Nongyaikhong and Imphal river,

East -- Nongyaikhong,

West -- Imphal river.

3. On 10-1-67 the S. D. M., Thoubal forwarded the petition of petitioner to the officer in charge of the Sugnoo Police Station for investigation and report.

4. The Officer-in-charge of the Police Station of Sugnoo submitted his report on 19-2-1967. He recommended that proceedings u/s 107, Cr. P.C. should be started regarding the land, the boundaries of which were mentioned by him, as follows:

North -- Phoubu Hiram,

South -- Imphal river,

West -- Imphal river,

East -- Nongyaikhong.

These are the same boundaries, which were mentioned by the petitioner also in his petition.

5. On 23-2-1967, the S. D. M., Thoubal, passed an order u/s 107, Cr. P.C. and issued notice to the parties to show cause why they should not be bound over as there was dispute regarding the land mentioned in the report of the Police. On 17-4-1967. he converted the proceedings into those u/s 145, Cr. P.C. and issued the preliminary order regarding the same land covered by the report of the Police. The parties were directed to file their written statements. Both the parties filed their written statements, documents and affidavits in support of their respective contentions. The written statement of the petitioner is the same as the petition filed by him on 9-1-1967. But, the respondents stated in their written statement (vide page 72 of the lower Court's file) that the boundaries of the disputed land mentioned in the preliminary order dated 17-4-1967 covered a vast tract of land measuring about 400 paris. while the area was incorrectly mentioned as 100 paris only. The respondents alleged further that the extent of the land actually in dispute is only 105 paris, which forms part of the disputed land, mentioned in the preliminary order and that the land actually in dispute is bounded as follows:

North -- Nongyaikhong,

South -- Imphal Turel,

East -- Nongyaikhong,

West -- Imphal Turel.

Then the respondents stated in their written statement that the northern boundary of the land mentioned by the petitioners in their petition is far to the north of the northern boundary of the disputed land (namely, Nongyaikhong) and that the land occupied by Wangoo Laiphom Joint Farming Co-operative Society Ltd. and Chairel Nongyaikhongnung Laiphom Pana, lie between the northern boundary of the disputed land and the Phoubu Hiram. The respondents confined their claim to the land mentioned in Para. 1 of their written statement, whose boundaries are extracted above.

6. The learned Magistrate discussed the affidavits and documents and came to the conclusion that the, disputed land, which is covered by the preliminary order, was in the possession and enjoyment of the respondents and that they are entitled to be in possession of the same until they are ousted therefrom in due course of law.

7. The petitioner carried the matter in revision to the Sessions Court, Manipur, which was disposed of by the learned Additional Sessions Judge in Criminal Revision Case No. 28 of 1967. He agreed with the findings given by the S. D. M, and dismissed the revision petition. Hence, the present Criminal Revision Petition.

8. The contention of the petitioner's learned Counsel is that though the respondents claimed to be in possession of only 100 paris of land, as mentioned and described by the boundaries noted in para 1 of their written statement, both the Courts below upheld the alleged possession of the respondents for about 400 paris of land by confirming the preliminary order of the S. D. M. dated 17-4-1967 and the final order. The learned Additional Sessions Judge discussed this aspect of the case in Paragraphs 10 to 16 of his judgment. He states that the land in dispute mentioned by the S. D. M. in his preliminary order dated 17-4-1967 is the same as that mentioned in the Police report, that the final order passed by the learned S. D. M, also relates to the same land, that the said land was also attached, that the Parties knew what land is in dispute, that there was no need to make any local enquiry u/s 148. Cr. P.C., and that there is no substance in the contention of the petitioner's counsel that there is genuine dispute regarding the identity of the land. The learned Additional Sessions Judge fell into a grave error in overlooking the boundaries of the land in dispute. Regarding the eastern, southern and western boundaries of the land in dispute, there is no dispute. They are the same as those mentioned by the petitioner in his schedule, filed with the petition on 9-1-1967. But, he mentioned the northern boundary of the disputed land as "Phoubu Hiram". The Police accepted this northern boundary as correct. But according to the respondents themselves, this northern boundary of Phoubu Hiram is much towards the north of the actual northern boundary of the land in dispute. The actual northern boundary of the disputed land is "Nongyaikhong"

and not "Phoubu Hiram". The total extent of the land upto Phoubu Hiram is 400 paris, while the actual extent of the land in dispute is only 100 paris. The learned Additional Sessions Judge states in Para. 12 of his judgment that this discrepancy in the northern boundary is due to the fact that according to the petitioner the area in dispute is 100 paris, while according to the respondents it is 105 paris. This is incorrect. The difference between the areas claimed by both the parties is Not 5 paris but 300 paris. The respondents confined their claim only to 100 paris of land bounded by Nongyaikhong on the north. But, both the Courts below confirmed the respondents' alleged possession of land to the extent of 400 paris extending upto Phoubu Hiram.

9. The contention of the learned Counsel for the respondents is that the land was under attachment, that both parties filed their written statements, affidavits and documents, that the petitioners did not raise any objection regarding the identity of the land and that they knew what the land in dispute was. The attachment was for all the 400 paris of land within the boundaries mentioned in the report of the police. On account of the fact of attachment the parties cannot be said to have known that the actual dispute was, however, confined to 100 paris of land only, though all the 400 paris were attached. The petitioner raised the dispute regarding 400" paris of land. The affidavits and documents filed by him relate to that land. The respondents confined their claim only to a portion of it, being 100 paris in extent, and their affidavits and documents related to 100 paris of land only. It was the clear duty of the S. D. M. and the learned Additional Sessions Judge to find out the identity of the land in dispute and confine their orders to it. The Courts could not confirm the alleged possession of the respondents to about 300 paris of land, not claimed by them.

10. The contention of the learned Counsel for the respondents is that mere misdescription of the property is only an irregularity and that the final order of the S. D. M. is not liable to be set aside on this score. He relied on *Depu Kachari and Others Vs. Padma Kanta Barua*, , *Khudiram Mandal Vs. Jitendra Nath and Another*, and *Padmanava Bhattacharjee and Others Vs. Bidhubushan Das and Others*, . But, this is not a mere misdescription of the boundaries. This is a wrong description of the boundaries, which is bound to cause prejudice to the petitioner and unlawful advantage to the respondents, who never claimed it. Both the Courts wrongly confirmed the alleged possession of 300 paris of land by the respondents, though it was not claimed by them. Though, it is not mandatory u/s 148, Cr. P.C. to make a local enquiry, as can be seen from Section 148, Cr. P.C. itself vide also *Jagdish Thakur and Others Vs. Jadoo Pandey and Others*, the S. D. M. would have been well advised to make a local enquiry to find out and identify the actual land in dispute. Though, the respondents did not claim 300 paris of land to the south of Phoubu Hiram, the final order passed by the Magistrate includes that land also. If it is to be held that the preliminary order was confined to only 100 paris of land claimed by the respondents according to their written statement, then it follows that the final order includes the property not included in the preliminary order and that it is, therefore, liable to be set

aside. Vide A.G.V. Subramania Iyer and Others Vs. Pudumadan and Others, in this respect, which supports my view.

11. The second contention of the petitioner's counsel is that the learned S. D. M. did not "peruse" the affidavits and documents and discuss their effect as required by Section 145(4), Cr. P.C. and that, therefore, his order is liable to be set aside. The meaning of the word "peruse" occurring in Section 145(4), Cr. P.C. was thoroughly discussed by me in *Laiph-rakpam Leiran Singh v. Nongthombam Leiren Singh* AIR 1967 Mani 23 : 1966 MLJ 65 . The learned Counsel for the petitioner also relied on the decisions of the other High Courts, which support my view, namely, *Kali Thevan Vs. K.K. Giriraja Kalingarayar and Another*, *Murali Patel Vs. Purusottam Bhati and Another*, . *Nadia Chand Das Vs. Baishnab Charan Das and Others*, and *Raghunath Behera and Others Vs. Purna Chandra Mahanta and Others*, . He also relied on. *Bansi and Others Vs. Hari Singh and Others*, and *Kappa Puttanna Ningaiah Vs. M.S. Sreeman*, in support of his contention that the failure of the Magistrate to give reasons for his order vitiates the same. He relied on *Imaman Mian and Another Vs. Saligram Singh*, in support of his contention that mere enumeration and non-consideration of documents also vitiates the order. A perusal of the order of the S. D. M. shows that he referred to the affidavits and documents filed by either side and that he discussed their effect under the heading "determination". But, he did not scrutinise the documents and discuss the effect on the identity of the land. But I do not propose to enter into the merits of the cases evidenced by the affidavits and documents filed by both the parties, which was discussed by the counsel in the Revision Petition as the matter is being remanded to the S. D. M. for fresh disposal. this Court cannot substitute its own finding of fact for the finding of fact by the S. D. M.

12. The learned Counsel for the respondents strongly contended that there is concurrent finding of facts by both the Courts below, that in revision this Court should not interfere with a discretionary order and that, therefore, the revision petition is liable to be dismissed. He relied on a number of rulings, namely, *Prayag Dusadh and Others Vs. Ramjatan Pandey*, , *Mohan Singh v. State* AIR 1952 Pepsu 129 , *Durga Din Vs. Smt. Rani Udai Kunwar*, Division Bench, *In re In Re: Khalandar Saheb*, , *Corporation of Calcutta Vs. Mulchand Agarwalla*, , *Dodda Revanna v. T.V. Narayana Murthy* AIR 1957 Mys 43 *Chimanlal Vs. The State*, *Srimanta Manna and Another Vs. The State*, , *Raghavan Pillai Vs. Gourikutty Amma and Another*, , *In re In Re: Malepati Srihari Rao*, and *C. S. Ratanchand v. Multanmull* AIR 1964 Mys 117. But as pointed out by me in AIR 1967 Mani 23: 1966 MLJ 65 the High Court may examine the correctness, legality or propriety of any order passed by an inferior Criminal Court and if it finds that the order is not correct or that it is illegal or improper, then it may exercise any of the powers conferred on the Court of appeal by Section 423, Cr. P.C. The revisional jurisdiction of the High Court in respect of an order u/s 145(4) Cr P.C. is the same as in respect of other orders and proceedings of inferior Criminal Courts. Where the Magistrate has not complied with the mandatory requirements of Section 145(4), Cr. P.C., it follows that ex facie the order is improper and that on

account of the failure of the Magistrate to take into consideration the affidavits and large portions of material evidence, the natural inference must be that there has been a miscarriage of justice. Vide also Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay, . So, the Court is certainly entitled to interfere in revision and set right the miscarriage of justice done by both the Courts below by confirmation of the alleged possession of the respondents with regard to about) 300 paris of land, not claimed by them at all.

13. The learned Counsel for the respondents contended that the plea of the petitioner that the S. D. M. did not properly peruse the affidavits and documents within the meaning of Section 145(4), Cr. P.C. is new plea and that it cannot be looked into. He relied on Jogendra Nath Sarker v. Nagendra Nath Biswas AIR 1955 Cal 2874. But, the petitioner stated in ground No. 1 in the grounds of revision that both the Courts below failed to appreciate the evidence. So, this is not a new plea taken by the petitioner.

14. Another contention of the respondents' counsel is that though the petitioner alone filed the petition u/s 107, Cr. P.C. before the S. D. M. representing the other villagers of Wangoo, still he represents all the villagers of Wangoo, that their non-joinder is not bad and that the order in question is not vitiated thereby. He relied on Bholanath Dhar and Others Vs. Gour Gopal, and Sukchand Roy Vs. Sefazuddin Mohammad, The petitioner's counsel did not contend that, because other villagers of Wangoo were not added, the final order of the S. D. M. does not bind them. He too proceeded on the footing that the order is binding on the petitioner and the other villagers, provided it is otherwise valid.

15. In the result, the revision petition is allowed and the orders of the Courts below are set aside. The matter is remanded to the S. D. M. He is directed to make a fresh enquiry in the light of the observations made herein. He should first of all identify the land in dispute and modify the boundaries of the land mentioned by him in the preliminary order, so as to limit the dispute to the actual land in dispute. Secondly, he may make a local enquiry u/s 148, Cr. P.C. if necessary, for the purpose of identification of the land. Thirdly, he should carefully peruse the affidavits and the documents filed by both the parties and discuss their bearing on the disputed land and should come to a correct conclusion according to law.