
(1958) 04 GAU CK 0008
In the Gauhati High Court

Warepam Lukhoi Singh

APPELLANT

Vs

Lepchung Kom

RESPONDENT

Date of Decision : 21-04-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 202

Citation : AIR 1959 Guw 30 : AIR 1958 Guw 30 : (1959) CriLJ 742

Hon'ble Judges : J.N. Datta, J.C.

Bench : Single Bench

Judgement

J.N. Datta, J.C.

1. This is a reference made by the learned Sessions Judge, Manipur, that the order of Shri Basir Ahamad, M. F. C, passed Order 21-10-1957, in Criminal Misc. Case No. 11 Order 1957, a proceeding u/s 145, Criminal P. C., upholding the possession of Lepchung Kom (opposite party in this proceeding) and prohibiting any disturbance of it by Warepam Lukhoi Singh (petitioner in this proceeding) in respect of some land covered by Darabadi Patta No. 7/33 I. E. T., suffers from illegality and want of jurisdiction, and should therefore be set aside.

2. In my opinion, the facts have been mis-appreciated with the result that the law has not been correctly applied, and I am afraid this reference was unnecessary and cannot be accepted.

3. The facts which emerge on a scrutiny of the record and which I think are correctly stated in the report submitted by the Magistrate were these: Order 3-6-1957, Lepchung Kom (Opposite party) filed a complaint under Rules 326 and 447, I. P. C., against Warepam Lukhoi Singh (petitioner) before the District Magistrate, who transferred it to Shri Basir Ahamad for disposal. The Magistrate examined the complainant, and directed a Police enquiry u/s 202, Criminal P. C.

It appears that the Police made an enquiry, and instead of submitting a report to the Magistrate regarding the truth or falsehood of the complaint, they submitted a report or complaint for action u/s 145 of the Criminal P. C., to the

District Magistrate Order 22-7-1957. It went to the A. D. M., who transferred it to Shri B. Ahamad for disposal. This report was submitted on the printed form of "Register of Cases in which no First Information is used" and it contained in the remarks column, where the facts were stated, a prayer for action u/s 145, on the ground that a dispute existed between the parties, over this-land, and a breach of the peace was apprehended due to that dispute, It is significant to note, that no reference was made in this complaint as regards the complaint of Lepchung Kom (O. P.) under Rules 326 and 447, which he had filed Order 3-6-1957 and which was forwarded to the Police u/s 202 for enquiry and report.

The Magistrate (Shri B. Ahamad) on receipt of the complaint u/s 145, opened an order-sheet and registered that case as Criminal Misc. Case No. 11 Order 1957, which has given rise to this reference. The order sheet is innocent of any reference to the complaint under Rules 326 and 447. After enquiry the learned Magistrate passed the impugned order.

4. It appears that the Police did not make any report on the matter referred to them u/s 202, Criminal P. C., and most probably were content with starting proceedings u/s 145, and the written complaint under Rules 326 and 447. on which the Magistrate had passed the order u/s 202, and which is on the record of the Magistrate tagged with the complaint u/s 145, was returned with it because the Police, as can be reasonably inferred in the circumstances, thought that no action on the complaint of Lepchung Kom was necessary.

In this, the Police were clearly in the wrong and they arrogated to themselves a power, which they did not possess. They were bound to make a report u/s 202, on the truth or falsehood of the complaint under Rules 326 and 447 and if they liked, they could also take separate action u/s 145, but it was not open to the Police to decide that they preferred an action u/s 145, Criminal P. C., only.

By this failure to carry out the order of the Magistrate they rendered themselves liable for contempt of the authority of the Magistrate, and I would have taken suitable action in the matter, but for the fact that these matters are not properly understood in these parts, and the provisions of the C. P. Code were not fully followed in the past, as will be clear from the fact, that the Magistrate also did not insist on a report and took no further action in the matter,

The Magistrates in this territory must make themselves conversant with the provisions of the Criminal P. C., and must see that their orders are duly carried out because without this, there can be no proper administration of justice. I trust that I will have no further occasion to see such weakness on the part of a Magistrate, and such failure on the part of the Police, and this will serve as an eye-opener and warning to all concerned.

5. I also feel that this confusion or omission was also due to the complaint of Lepchung Kom not having been properly handled by the Magistrate. When it was received by him on transfer, the proper course for him was to have seen that it was properly registered, and put up with an order sheet form. He should have

then passed the order referring the case to Police u/s 202 fixing a date for the report, which should have been communicated to the complainant. The case should have been called on that date and further action taken. It will be evident that by not following this necessary practice, cases are bound to be lost sight of, resulting in much confusion and harassment to the litigants.

6. Thus, it will be clear that there were two separate cases, one under Rules 326 and 447 on the complaint of Lepchung Kom and another u/s 145, Criminal P. C., on the complaint of the Police. The parties were the same, and the disputes might have arisen over the same land, but it will make no difference, and it is not possible to countenance, on that score, that no action will be taken on the complaint for specific offences. Otherwise if in a dispute over land, a person is killed, it might be said, that action u/s 145, Criminal P. C., alone would do.

Action u/s 145 is preventive and not punitive. Thus both the complaints were properly instituted and properly transferred to the Magistrate under the law, and the legal position clearly is, that while the proceedings u/s 145 have been disposed off, the complaint under Rules 326 and 447 is still pending, without a report u/s 202. That there was no substitution of one for the other, will be plain, and the case law relied upon in the reference order is thus distinguishable, because of the difference in the facts.

7. This being pointed out, the learned Counsel for the petitioner tried to show that on merits also the order u/s 145, could not be maintained. In my opinion the evidence was such, that the Magistrate could have reasonably come to the conclusion, that the first party, namely, Lepchung Kom, was in possession, and no useful purpose will be served by examining it in detail, because this Court will not in the exercise of its revisional powers, re-value the evidence as an appellate Court. The remedy of a suit is also open to the aggrieved party. No case has thus been made out for interference, and the reference is rejected.

8. The further orders, necessary in the case are: That the Magistrate, shall take out the complaint filed Order 3-6-1957, and the connected papers like the medical report on the injuries found on the person of Lepchung Kom, and proceed to register it as a criminal case, and open an order sheet. He shall then decide whether it is still necessary to have an enquiry made u/s 202.

If he considers it necessary, he shall pass an order giving reasons for the same, as is required by Section 202 (he did not give any reasons in his previous order). If he considers that no such enquiry is necessary, or in case he considers that it is necessary, then after the enquiry has been made in the manner directed by him, he will proceed to deal with the complaint according to law.