
(1977) 09 AHC CK 0035
In the Allahabad High Court

Zila Parishad

APPELLANT

Vs

K.C. Saxena and Others

RESPONDENT

Date of Decision : 06-09-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 133, 144, 145

Citation : (1977) CriLJ 1747

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Kapoor, J.—These two revisions are directed against the same order dated 12-7-1977 of the Sessions Judge, Etawah allowing Cr. Revision No. 38 of 1977 and setting aside the order dated 23-6-1977 passed by the Addl. District Magistrate, Etawah u/s 144, Cr. P. C. The Zila Parishad is represented by Sri N. S. Chaudhary, Sri K. C. Saxena is represented by Sri Virendra Saran while Raj Bahadur who was allowed to be impleaded subsequently in both these cases is represented by Sri Birendra Dikshit and Sri H. N. Misra. The order u/s 144, Cr. P. C. prohibited persons other than the Zila Parishad from holding the cattle market in Baipura and Rajmau area within a radius of four kilo-metres from that area for a period of two months. The Magistrate was satisfied that there was apprehension of breach of the peace and so he passed the prohibitive order. Kailash Chand Saxena alone had filed a revision before learned Sessions Judge. He was interested in holding the cattle market in Rajmau on the land which is claimed to be his bhumidhari land- Raj Bahadur was the other person interested in holding the cattle market in village Baipura on the land which he claimed to be his bhumidhari land and abadi land. The case of the Zila Parishad was that the land on which the market was held in Baipura vested in the State after coming into force of the U. P. Zamindari Abolition and Land Reforms Act and the management of the same was given to the Zila Parishad. For this purpose on behalf of the Zila Parishad reliance was placed on the cases of State of U.P. Vs. Smt. Ram Sri and Another, and Maharaj Singh Vs. State of Uttar Pradesh and

Others, . That case was between the same parties which went upto the Supreme Court. Learned Counsel for Raj Bahadur, however, asserts that that case was not in respect of the entire land on which the market was held and was only in respect of a portion of the land on which the cattle market was held.

2. With regard to the cattle market of Rajmau, the case of the Zila Parishad was that the Zila Parishad alone had a right to hold the market there. On behalf of the Zila Parishad reliance was placed on a judgment of this Court in Civil Misc. Writ No. 9310 of 1975 (All) which was between the same parties. It appears that that writ petition was filed by Kailash Chand Saxena and was ultimately dismissed as having become infructuous as the order u/s 144, Criminal P. C. which had been promulgated earlier, had exhausted itself. Learned Counsel for Kailash Chand Saxena, however, states that that was in respect of a different plot which was claimed to be its own land by the Zila Parishad, Learned Counsel for the Zila Parishad on the other hand, states that it was in respect of the same cattle market at Rajmau. It may also be stated here that before the Sessions Judge, the Zila Parishad was not a party but it had applied to be impleaded as a party. The learned Sessions Judge did not allow it to be impleaded as a party but allowed the Zila Parishad to be heard and to oppose the revision. It was for this reason that an argument was advanced before me that the Zila Parishad had no right to file any revision as it was not a party. The fact remains that the Zila Parishad was very much an interested party. It was even heard and allowed to oppose the revision by the learned Sessions Judge. I am unable to appreciate as to why it was not actually allowed to be impleaded. In any view of the matter another revision had been filed by the State and as such the entire controversy is before me. Learned Counsel for Zila Parishad wanted me to see the affidavits filed in the Writ Petition No. 9310 of 1975 in order to show that twenty years contract was given to Kailash Chand Saxena in 1952 by the Zila Parishad for holding the cattle market in village Rajmau and that contract was again renewed for twenty years in 1972 but on account of certain default made by Kailash Chand Saxena, that contract was revoked. Learned Counsel for Kailash Chand Saxena opposed this prayer and argued that in this revision it will not be proper for this Court to look into the papers of Writ No. 9310 of 1975 as he claims that the identity of the plots which were in dispute in that writ petition, was not established and it cannot be said that they were the same plots which are in dispute in the present proceedings, in Rajmau. The grievance of the Zila Parishad is that the learned Sessions Judge had decided the case as if he was deciding the civil dispute and has given findings prejudicial to the Zila Parishad without looking into the papers of Writ No. 9310 of 1975 and without even stating the decision in the case between Raj Bahadur and Zila Parishad in respect of Baipura Cattle Market as reported in State of U.P. Vs. Smt. Ram Sri and Another, and Maharaj Singh Vs. State of Uttar Pradesh and Others, . I have, however, arrived at the conclusion that it is not possible to pass any effective order in these revisions at this stage as the order passed u/s 144, Cr. p. C. has exhausted itself and both the revisions have become infructuous. It is, therefore, not

necessary for me to consider the merits of the respective claims of both the parties. It is made clear that it will not be deemed that I have agreed with the view taken by the learned Sessions Judge on merits as I am not entering into the merits of the respective claims.

3. Learned Deputy Govt. Advocate desired that even though the revisions have become infructuous as the order u/s 144, Cr. p. C. has exhausted itself, yet it is proper that this Court should finally decide whether the learned Sessions Judge had power to interfere in such a revision against the order u/s 144, Cr. p. C. It is a question of general importance and as such a decision was sought on this point. For this proposition, he has placed reliance on the case of Hrushikesh Acharya and Another Vs. Balaram Pati and Another, and some other cases, I have, therefore, heard him on this point. His contention is that prior to the coming into force of the Cr. P. C., 1973 and after 1973 (sic) (before 1-4-1974 ?), it was, no doubt, possible for the High Court to interfere in revision against an order u/s 144, Cr. P. C. but after the 1st of April, 1974, no revision lay against an order u/s 144, Cr. P. C. which is purely of executive nature. In all fairness, Sri Malviya, the Deputy Govt. Advocate himself cited the case of Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, in which it was held that under the old Criminal P. C. a revision would lie against an order u/s 144, Cr. P. C. That was the ground for holding that the provisions u/s 144, Cr. p. C. were not hit by the Constitution and the restrictions were reasonable. While dealing with the provisions of Section 144, Cr. P. C. their Lordships of the Supreme Court have made the following observation : (at p. 2496 of AIR)

It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. At another stage their Lordships also observed:

Thus the person affected has several remedies. He can ask the order to be vacated as against him, he can file a revision and even a petition for a writ." Sri Malviya has, however, argued that under the new Cr. P. C. Executive Magistrates have been appointed and executive functions have been separated and that the order u/s 144, Cr. P. C. is exclusively administrative in nature. I see no reason for taking such a view. The proceedings u/s 107/116, Cr. P. C., u/s 133, Cr. P. C. and u/s 145, Cr. P. C. are also to be taken by the Executive Magistrates. It can certainly not be argued that no revision lies against the orders under those proceedings. All orders passed under the Cr. P. C. can be reviewed by the High Court or the Sessions Judge u/s 397, Cr. P. C. The Explanation to Sub-section (1) of Section 397, Criminal P- C. clearly provides that "all Magistrates, whether Executive or Judicial shall be deemed to be inferior to the Sessions Judge for the purpose of this Sub-section and of Section 398, Cr. p. C." No exception was made anywhere in respect of orders passed u/s 144, Cr. P. C. by Executive Magistrates. I am, therefore, of the opinion that the authority of the Hon the Supreme Court reported in Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others,

still holds good.

4. The learned Deputy Govt. Advocate next argued that interference is possible only when the order is patently wrong. The Hon. Supreme Court has itself held that interference should be made in revision in exceptional cases when there is a glaring defect in the procedure or there is manifest error on the point of law and consequently there has been flagrant miscarriage of justice. In a matter which is likely to give rise to apprehension of breach of the peace and which may lead to riots, the revisional courts are certainly expected to be more cautious. It will, however, be purely of academic interest at this stage to review the entire order passed by the learned Sessions Judge and to give findings whether it was properly passed or not. I, therefore, do not consider it necessary to review that order once I have reached the conclusion that it is possible for the Sessions Judge or the High Court to interfere in revision even with regard to an order u/s 144, Cr. P. C.

5. The learned Deputy Govt. Advocate has also argued that the view taken by the learned Sessions Judge that, substance should have been given is wrong as form No. 24 only prescribes that source of information should be mentioned and there is no provision for giving the substance. In support of this contention, he has placed reliance on the case of 1972 WLN 825 (Raj) which could not be placed before me. He, however, cited the case of Thakin Aung Bala v. District Magistrate of Rangoon AIR 1939 Rang 181 : 40 Cri LJ 645 before me. I do not think that this authority supports the contention of the learned Deputy Govt. Advocate as it provides that the Magistrate must set out the material facts of the case in his order. Section 144, Cr. p. C, itself provides "the Magistrate by a written order stating material facts of the case". It would obviously mean "substance of the case". No doubt, the Magistrate is not required to take evidence before issuing such an order. It was clearly laid down by their Lordships of the Supreme Court in the case reported in Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, that "there is no general proposition that an order u/s 144, Cr. P. C. could not be passed without taking evidence."

6. Lastly, the learned Deputy Govt. Advocate argued that it was an interlocutory order and as such the revision was barred u/s 397(2), Cr, P. C. He has laid great stress on the fact that Sub-section (5) of Section 144. Cr. P. C. has now been added to Section 144, Cr. P. C. which is as follows :

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office." He has argued that there was no such provision in the old Cr. P. C. As such, now it is possible for the party aggrieved to approach the Magistrate and get redress. The original order thus, according to him, is interlocutory in nature, The prohibition under the original order was absolute. It was not subject to showing cause. It is a different matter that it was possible for the Magistrate to rescind or alter the order passed by him at a subsequent stage. Even this provision is not new and is

the same as Section 144(4), Cr. P. C. (old). In an unreported decision in the case of Amarnath v. State of Haryana. (Cr. Appeal No. 124 of 1977 decided on 29-7-1977) : AIR 1977 SC 2181 it was held by the Hon. Supreme Court that summoning of accused will mean initiation of proceedings and the order passed summoning the accused could not be considered to be purely interlocutory in nature. The order passed u/s 144, Cr. P. C, has greater finality than the order merely summoning the accused. The proceedings therefore, cannot be considered to be wholly interlocutory. In my opinion, the revision could lie against such an order, Both the revisions are liable to be dismissed as the order passed u/s 144, Cr. P. C. has exhausted itself. I am even informed that a fresh order has been passed and another revision has been filed against that order which is pending in this Court, For this reason also, these revisions are liable to be dismissed.

7. Before parting with these cases, I may state that it was argued with regard to Cr. Revision No. 985 of 1977 that grounds Nos. 3 and 7 taken in the memo of revision amount to contempt of the Court of Sessions Judge, who decided that revision in the lower court. Sri. N. S. Chaudhri tendered his apology for taking these grounds stating that he himself took these grounds which unfortunately were not properly worded. I have accepted apology tendered by him.

8. In the result both the revisions are dismissed subject to the observations made above.