

M. Anwar and anr. Vs. Haji Abdul Aziz Saheb and ors.

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Court : Karnataka

Decided On : Sep-14-1970

Reported in : AIR1971Kant71; AIR1971Mys71; 1971CriLJ384; (1970)2MysLJ451

Judge : Ahmed Ali Khan and ;S.R. Range Gowda, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145(1)

Appeal No. : Criminal Revn. Petn. No. 493 of 1969

Appellant : M. Anwar and anr.

Respondent : Haji Abdul Aziz Saheb and ors.

Advocate for Def. : K. Swamy Rao, Adv.

Advocate for Pet/Ap. : Mahesh Chandra Guru, Adv.

Disposition : Petition dismissed

Judgement :

Ahmed Ali Khan, J.

1. This reference is made under Section 8 (2) of the Mysore High Court Act, 1961, by single Judge of this court to this Bench. It was argued on behalf of the petitioner that the provisions of Section 145 of the Criminal Procedure Code are self-contained, and inasmuch as the said provisions do not provide for calling for report

from the police in respect of the application filed under Section 145, Cr. P. C. the Magistrate was not competent to call for the report from the police. His Lordship Justice Venkataswami was of the opinion that on the express terms of Section 145, Cr. P. C. the contention advanced on behalf of the petitioners involved point of law; and referred the case to this bench.

2. The material facts briefly stated are: that an application was filed under Section 145, Cr. P. C., by the members of the First party that the disputed saw mill situated in Mysore originally belonged to one Haji Abdul Aziz Saheb. The first member of the first party and the first member of the second party are brothers and they are sons of Haji Abdul Aziz Saheb. The second member of the first party is the widow of Haji Abdul Aziz Saheb. The other members of the second party are said to be alleged purchasers of the saw mill from the first member of the second party. After the death of Ha.ij Abdul Aziz Saheb, a dispute arose with regard to the possession of the mill. The first party moved the City Magistrate, Mysore by an application under Section 145 of the Cr. P. C. The learned Magistrate on filing of the application called for the police report and after receipt of the same on 15-7-1969. he made the following order in the Court-sheet:

'15-7-1969. Complainant present and says that he will prove his case posted on 22-8-69 for evidence of 1st party.' On 22-8-1969, he heard the counsel for the first party and posted the case for orders on 29-8-1969. The Court-sheet of that day reads: '1st party at request further argument heard from the counsel for 1st parties. He files a list with documents: Order on 3-9-69.'

And, eventually on 11-9-1969, he passed the order, the operative portion of which reads:

'I am satisfied that there is no truth in the averments made by the 1st party members as to the circumstances of any breach of peace. With this observation I make an order stating that there is no circumstance for this Court to interfere by passing an order under Section 145 (1), Cr. P. C. The 1st party has to seek its relief in a proper forum and forum is not this Court. Accordingly, I dismiss this application.'

3. The reference made to this bench is to the effect that the provision of Section 145, Cr. P. C. being self-contained there is no scope for calling for a police report. Mr. Mahesh Chandra Guru, learned counsel for the petitioners argued, that Section 145 of the Cr. P. C. is self-contained and it contains no provision for calling for a report from the Police in respect of a complaint such as the one made by the petitioners before the Magistrate. He submitted that under the provision of Section 145 of the Cr. P. C., the Magistrate can exercise his jurisdiction only on the basis of police report or other information. According to him, in cases where there is likelihood of breach of the peace in respect of dispute relating to immovable property, the police could submit a report to the Magistrate requesting him for necessary action to be taken under Section 145 or other relevant provision of the Cr. P. C. A private party also, who apprehends breach of the peace in respect of dispute relating to immovable property, may move the Court under Section 145 of the Cr. P. C. He urged that the Magistrate can proceed under Section 145 of the Cr. P. C., on the basis of the police report or the complaint made to him by a private person. But he maintained that it is not open to Magistrate to call for the police report. In other words, his submission was that the Magistrate should make up his mind on the material placed before him and then proceed to pass the necessary order.

4. Section 145 of the Cr. P. C. reads:

'(1) Procedure where dispute concerning land, etc., is likely to cause breach of peace: Whenever a District Magistrate. Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land,... .. within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons as they rely upon in support of such claims.

(2) For the purposes of this Section the expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) Inquiry as to possession:-- The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in, hear parties and conclude the inquiry as far as may be practicable within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before-mentioned in such possession of the said subject:

Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein:

Provided further that if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case, the Magistrate shall cancel his said order and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-section (1) shall be final.

(6) Party in possession to retain possession until legally evicted: If the Magistrate decides that one of the parties was or should under the second proviso to Sub-

section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the second proviso to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop, or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings, under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under Section 107.'

5. It is thus seen that Section 145 provides the procedure to be followed when the Magistrate is satisfied (i) a dispute exists concerning any land etc., within the local limits of his jurisdiction; (ii) such dispute is likely to cause a breach of the peace. When he is so satisfied, he must pass a preliminary order under Section 145 (1) of the Cr. P. C. and afterwards make an inquiry under Sub-section (4) of that section. Though a proceeding under Section 145 of the Cr. P. C., constitutes an 'inquiry' within the meaning of Section 4 (1) (k) of the Cr. P. C., Section 145 (1) does not

contemplate any sustained inquiry before making the preliminary order. Therefore any action taken by the Magistrate before starting proceeding under Section 145 of the Cr. P. C., cannot be construed or said to be something which it was necessary for the Magistrate to do under Section 145 of the Cr. P. C. It is essential for the assumption of jurisdiction to initiate proceeding under Section 145, Cr. P. C., that the Magistrate should be satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists. It is not possible, however, to lay down any hard and fast rule to specify the sufficiency of the materials, upon which a Magistrate ought to be satisfied before he assumes jurisdiction in a particular case. It is the Magistrate's satisfaction only which is required and not the satisfaction of any informant or any police officer. In order that a Magistrate be relieved of all doubt or uncertainty and for his mind to be reasonably certain, or free from doubt, there is nothing in Sub-section (1) of Section 145 of the Cr. P. C., which defines upon what grounds he shall be satisfied or limits to his being satisfied. The question whether, upon the material placed before him, proceeding should be initiated under Section 145 of the Cr. P. C., is one which is entirely within the Magistrate's discretion, and that was the pronouncement made by the Supreme Court in *R. H. Bhutani v. Mani J. Desai* : 1969 CriLJ13 . It is observed at p. 1448 of the report, thus:

'The satisfaction under Sub-section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well-recognized rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction.'

The language used in Sub-section (1) of Section 145 of the Cr. P. C., enables the Magistrate to form his opinion on any information received not necessarily on evidence and he need not summon the witnesses before passing a preliminary order, nor is it necessary for him to call for police report if he is otherwise satisfied on the facts alleged in the application itself which was made under Section 145 of the Cr. P. C. on the sworn statement of the complainant. The Magistrate has the widest possible latitude in interpreting the words 'or other information' occurring in Section 145 (1) of the Cr. P. C. That was the principle enunciated by the Supreme

Court in the case referred to above. It is observed at page 1449 of the report:--

'The words 'other information' are wide enough to include an application by a private party.'

This clearly indicates that wider interpretation should be put on the words 'other information' occurring in Section 145 (1) of the Cr. P. C.

Again in para 9 of the judgment, at p. 1448 of the report, it was observed by their Lordships that:

'The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or 'from other information' which must include an application by the party dispossessed.'

This observation also goes in support of our view that the words 'other information' used in Section 145 (1) of the Cr. P. C., are capable of widest import. The resultant position is this, that the words 'other information' in Sub-section (1) of Section 145 of the Cr. P. C. are wide enough to cover the knowledge of the Magistrate or to cover the knowledge of the Magistrate by calling for the police report also. There is nothing in that sub-section which prohibits the Magistrate from calling for a police report before he could proceed to make a preliminary order under Section 145 (1) of the Cr. P. C. Under that sub-section, the Magistrate can base his action on a sworn statement of person who presented the complaint or by calling for a police report or even on perusal of affidavits filed by the parties in other proceedings, for the simple reason that the satisfaction under Section 145 (1) of the Cr. P. C., is of the Magistrate.

In a decision of this Court in K. Ganesh v. K. Venkateswara Iyer, in (1963) 2 Mys LJ 361 it was observed--

'Before initiating a proceeding under Section 145, Criminal P. C., a Magistrate should be either moved by the Police or, if moved by a private party, he should call for a report from the police as regards the likelihood of the breach of the peace. It may be, that in certain exceptional circumstances, he may act on other information- But that information must come to him from disinterested source.'

It is true that the Supreme Court in : 1969 CriLJ13 referring to the decision of this Court in 1964 (2) Cri. LJ 100 (Mys) observed that the language used in Section 145 (1), Criminal P. C. is not capable of such restrictive interpretation as laid down by this Court. But it is not laid down therein that the Magistrate is precluded or prohibited under Section 145 (1) of the Criminal P. C. to call for a police report. This is what was observed at page 1449 of the report:

'The view taken in the aforesaid decisions Emperor v. Phutanja, 25 Cri LJ 1109 - (AIR 1925 Nag 142) and 1964 (2) Cri LJ 100 (Mys) unnecessarily and without any warrant from the language of Sub-section (1) limits the discretion of the Magistrate and renders the words 'other information' either superfluous or qualifies them to mean other information verified by the police. In our view, once the Magistrate, having examined the applicant on oath, was satisfied that his application disclosed the existence of the dispute and the likelihood of breach of peace, there was no bar against his acting under Section 145 (1).'

It is, thus, seen that the Supreme Court has not laid down that the Magistrate was not competent to call for the police report. On the other hand, by implication, the indication contained in the observation of the Supreme Court goes in support of the contrary view. In other words, the Magistrate has the widest possible latitude under Section 145 (1) of the Cr. P. C., for being satisfied before he could pass the preliminary order under the Sub-section (1) of Section 145 Cr. P. C. No limitations or restrictions can be imposed upon his discretion as to whether on the material placed before him proceeding should be initiated under Section 145, Cr. P. C. if it is otherwise exercised judicially. It is open to him to be satisfied that a dispute likely to cause a breach of peace exists on the basis of the material before him including the report called by him from the police, since Section 145 (1) of the Code of Criminal Procedure does not mention that the report made by the police must be suo motu.

In this view of the matter, we are of the opinion that Sub-sections (1), (4), (5) and (6) of Section 145 of the Cr. P. C. are complementary. Once an order under Sub-section (1) of Section 145 of the Cr. P. C. has been passed, it is obligatory for the Magistrate to follow the procedure laid down in the subsequent provisions of that

Section. In other words, when once the Magistrate is satisfied as to the likelihood of the breach of the peace, he must pass a preliminary order under Sub-section (1) and afterwards make an inquiry under Sub-section (4). When once the Magistrate acquires the jurisdiction to initiate proceeding under that section, it is incumbent upon him to comply with the procedure laid down in Section 145, Cr. P. C., and to this extent the provisions of Section 145 of the Cr. P. C. are self-contained.

6. The second contention advanced by Mr. Mahesh Chandra Guru on behalf of the petitioner is that the Magistrate having posted the case of the first party on 15-7-1969 ought not to have dismissed the complaint petition. According to him, the Court should have afforded an opportunity to the complainant to adduce his evidence. We are of the opinion that on the material on record, the contention advanced by Mr. Mahesh Chandra Guru is unsustainable, (Here His Lordship discussed the evidence on the record and proceeded.)

7. From the record, it cannot be said that no opportunity had been given to the petitioner to adduce the evidence. The petitioner did adduce evidence in the shape of documents and it was taken into consideration by the Magistrate. Nowhere it appears from the record that the petitioner was willing to adduce any oral evidence. Therefore, on the material on record, the contention advanced by Mr. Mahesh Chandra Guru that no opportunity had been afforded to the petitioner to adduce evidence is unmaintainable.

8. Thus for the reasons stated above, this petition is disallowed and the same is dismissed.