

imambu Vs. Hussenbi

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Court : Karnataka

Decided On : Jan-29-1960

Reported in : AIR1960Mys203; 1960CriLJ1112; ILR1960KAR471

Judge : K.S. Hegde, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145 and 145(6)

Appeal No. : Criminal Revn. Petn. No. 345 of 1959

Appellant : imambu

Respondent : Hussenbi

Judgement :

ORDER

(1) This revision petition arises from the decision of the learned Sub-Divisional Magistrate, Gadag, in Miscellaneous Case No. 5 of 1957 on his file, which was a proceeding under Section 145 of the Criminal Procedure Code. After examining the evidence before him, the learned Sub-Divisional Magistrate, came to the conclusion that Party No. 1 was in possession of the lands in dispute. Consequently he passed the necessary order under Section 145(6) Cr.. P. C. As against that order, the party No. II has come up in revision to this court.

(2) The only point argued before this Court is that the learned Sub Divisional Magistrate was not competent to enquire into the dispute as the very dispute was

the subject matter of the suit in I. C. Suit No. 49 of 1957 on the file of the Civil Judge Gadag, which was pending trial at the time the order under revision was passed. This contention does not appear to have been taken either before the learned Sub Divisional Magistrate or before the learned Additional District Magistrate, or before the learned Additional District Magistrate, Dharwar, when the matter was taken up in revision. In support of his contention the petitioner's learned Counsel placed strong reliance on certain observations made in *Malkappa v. Padmanna* (AIR 1959 Mys. 122). The Head Note of that decision reads that

'a criminal Court should not proceed under Section 145 Cr.. P. C. In respect of immovable property which is the subject matter of Civil litigation actually pending in a civil Court. By reason of the pendency of the civil litigation the magistrate should proceed under Section 107 Cr.. P. C., to bind over the parties, who, it is apprehended, might commit some offence or commit breach of peace.'

This observation undoubtedly supports the petitioner's contention. But the actual decision to which I shall refer presently, is not of much assistance to the petitioner. To restate the point for determination in this case, does the pendency of L. C. Suit No. 49/57 take away the jurisdiction of the Sub Divisional Magistrate Gadag, to enquire into the proceedings (Misc. Case No. 5/57) before him? The language of section 145 Cr.. P. C. does not support the petitioner's contention. Nor is there any support for the view in the decided cases.

(3) From the decided cases, three different points of view emerge, i.e. (i) a Magistrate acting under Section 145 Cr.. P. C. is not bound by the decision of a competent Civil court. It is obligatory upon him to assume jurisdiction on being satisfied that a dispute likely to cause a breach of peace exists. The decision of a Civil Court is just one piece of evidence and nothing more. See *China Thambi v. Virappa* AIR 1937 Rang 202 Mst. *Hosnaki v. State* : AIR 1956 All 81, (ii) though the Magistrate is not bound by the decision of a competent Civil Court, the enquiry before him being summary in nature and further his decision being summary in nature and further his decision being subject to the decision of a Civil Court at a later stage, he should respect any recent decision being subject to the decision of a Civil Court at a later stage, he should respect any recent decision at a later stage,

he should respect and recent decision given by a competent civil court as regards possession of the property in dispute: See *Bandhoo Singh v. Govind Lall*, AIR 1954 Pat 310; *Tekchand v. Sabir Husain*, (S) AIR 1955 Hud 65 (FB); *Sheo Narayan Singh v. Bharath Singh*, AIR 1954 Pat 182, (iii) The Magistrate is bound by the decision of a competent civil Court and he must use his power under section 145 Cr..P. C. To implement that decision and not to act in derogation of the same. See *Venkatachallam v. Palayam*, : AIR1953 Mad594 ; *Mrs. V. E. Argles v. Chhail Behari*, AIR 1949 AIR 230; *Jang Bahadur Singh v. Nazimmul Haque*, AIR 1947 Pat 245; *Masihuddin v. The State* : AIR1953 All383 and *Pahalwan v. State* : AIR1951 All620 .

(4) The preponderance of judicial opinion is in support of the view that if there is a recent decision of a competent Civil Court by which the question of possession as between the contending parties has been decided or possession was delivered to one of the parties through Court then the Magistrate should not sit on judgment over that decision. On the other hand he should follow the same. This view is in accord with the spirit of sections 145 and 146 Cr.P.C. Any Magistrate acting under section 145 Cr.P.C. is not a court to decide the rights of parties. His primary function is to maintain law and order. He has been clothed with powers to decide some disputes which are essentially civil disputes as an aid to his duty to maintain law and order. The enquiry made by him is of a summary character and his decision on the question of possession is subject to the decision of a Civil Court of competent jurisdiction. It must also be borne in mind that in most cases the Magistrate holding enquiry under Section 145 Cr.P.C. Is likely to be an executive Officer not having had judicial training. Hence in my view a Magistrate acting under section 145 Cr.P.C. ought to respect any recent decision given by a competent civil court on the question of possession. This is not the same thing as saying that the decision given by the Civil Court deprives him of the jurisdiction conferred on him by section 145 Cr.P.C. It is a question of judicial propriety which has now ripened into a question of law. As a corollary to this Rule, it is reasonable to hold that if a Civil Court decides the question of possession even for the purpose of giving an interim relief, the Magistrate acting under Section 145 Cr.P.C. Should respect that decision as well. It may be that the decision of the Civil Court was arrived at after a summary enquiry. Then the decision is that of a Civil Court,

which is primarily the court to decide civil disputes. But the mere pendency of a suit in a Civil court is wholly an irrelevant circumstance. That does not take away the dispute which had necessitated a proceeding under Section 145 Cr. P.C. The possibility of a breach of peace would still continue. If the mere institution of a suit in a Civil Court is sufficient to deprive the Magistrate of his jurisdiction, anomalous results might follow. To give but one example, a party who had taken forcible possession of the property in dispute, within two months from the date of the preliminary order, realising that the decision of the Magistrate would go against him, may rush to the Civil Court at the last minute with a view to postpone the evil day and in the meanwhile continue to be in unlawful possession of the property, all the while the possibility of breach of peace continuing. If this is permitted the entire purpose of Section 145 Cr.P.C. Would be defeated. It is likely to become a game of hide and seek. It was held in *Ram Prasad v. Banwari* : AIR1956 All12 that a party by merely instituting a civil proceeding cannot ask the Magistrate to stay his hands and not to proceed with the inquiry under Section 145 Cr. P.C. If the Civil Court has given a decision final or interim, to that extent the dispute is a decided and the Magistrate should enforce law and order, on that basis. In the absence of such a decision the Magistrate has to pronounce on the dispute.

(5) Now turning to the decision in *Malkappa v. Padmanna* AIR 1959 Mys 122 in that case the first party (respondent) had not only filed a suit in the Civil Court but had also obtained a temporary injunction which had been made absolute long before the police instituted the proceeding under Section 145 Cr.P.C. In those circumstances his Lordship Narayan Pai J. came to the conclusion that the Magistrate should have respected the order of temporary injunction given by the Civil Court and acted in furtherance of that order. I do not think that the learned Judge intended to lay down as a proposition of law that a Criminal Court should not proceed under Section 145 Cr.P.C. in respect of immovable property which is the subject matter of civil litigation actually pending in a civil court. The question in that form did not arise for consideration in that case. Though some of the observations made in the course of the judgment support the contentions advanced on behalf of the petitioner, the actual decision does not help him. But these observations must be read along with the facts of that case.

(6) In the result, this petition fails and the same is dismissed.

(7) Petition dismissed.

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