

Sukumar and ors. Vs. State and ors.

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Court : Karnataka

Decided On : Oct-12-1971

Reported in : 1972CriLJ1402

Judge : S.R. Range Gowda, J.

Appellant : Sukumar and ors.

Respondent : State and ors.

Advocate for Pet/Ap. : Sri. Shivashankar Bhat

Judgement :

ORDER

S.R. Range Gowda, J.

1. This revision petition is directed against the two preliminary orders dated 10-8-1971 and 17-8-1971 passed by the Additional District Magistrate Man-galore in M. C. No. 1 of 1971. The first order relates to Survey No. Ts. 183/A2B measuring 12 cents situate at Kodialbail village, and it reads:

Whereas it has been made to appear to me and I am satisfied that a dispute exists between the parties specified above likely to cause a breach of peace concerning the possession of the property shown in the schedule attached at Kodialbail village property being situated within the local jurisdiction of this Court I Sri A. Viswanath

Additional District Magistrate. Mangalore do hereby require you to attend my Court at Mangalore in person at 3.00 P. M. On 17-8-1971 and file written statements affidavits and documents if any in respect of your respective claims regarding the possession of the properties mentioned in. the schedule.

2. The second order relates to Survey No. Ts. 183/AIB of the same village and it reads:

Whereas it has been made to appear to me and I am satisfied that a dispute exists between the parties specified above likely to cause a breach of peace concerning the possession of the property shown in the schedule attached at Kodialbail village property being situated within the local Jurisdiction of this Court. I. Sri A. Viswanath. Additional District Magistrate Mangalore do hereby require you to attend my Court at Mangalore in person at 3 p. m on 20-8-1971 and file written statements affidavits and documents if any in respect of your respective claims regarding the possession of the properties mentioned in the schedule.

3. The only ground on which these two preliminary orders are challenged by the petitioners in this petition is, that the Additional District Magistrate has failed to record in the impugned orders the reasons for his satisfaction to act under Section 145 (1) Criminal P.C. and that the orders Passed by him are in breach of that Section.

4. On the other hand the learned State Public Prosecutor appearing for the State and Mr. Tukaram S. Pai appearing for the second respondent contended that merely because the Addl. District Magistrate did not state the grounds or the reasons in his orders which led to his satisfaction it cannot be said that the orders passed by him are contrary to the provisions of Section 145 (1) Criminal P.C. and are illegal. They submitted that when those orders were passed, the Addl. District Magistrate had before him the F.I.R. and the report of the Sub-Inspector of Police which clearly show that there was a serious dispute between the parties in respect of those lands and that that dispute was likely to cause a breach of the peace and that it was that material that gave him the satisfaction to act under Section 145 (1) and to pass the impugned orders although he failed to mention therein all those facts.

5. My attention was drawn to the said F.I.R._ the report of the Sub-Inspector of Police and the other connected records in the file and also to the fact that those documents were before the Additional District Magistrate while he passed the impugned orders. It was not disputed by Sri Shivashankar Bhat appearing for the petitioner that the allegations contained in the said F.I.R. and the report of the Sub-Inspector of Police were such as to satisfy any authority empowered to act under Section 145 Cr. P.C. to take action under Section 145 (1) But his only grievance, as stated earlier, is that there is nothing in either of the impugned orders to show that on what basis the Addl. District Magistrate came to be satisfied that action under Section 145 (1) was necessary. That section no doubt requires the Addl. District Magistrate to state the grounds or record the reasons for his satisfaction. But. he has stated in both the orders that 'It has been made to appear to me and I am satisfied that a dispute exists between the parties specified above likely to cause a breach of peace.'

It was not disputed that the F. I. R and the report of the Sub-Inspector to which reference is made. were before him while passing the impugned orders. It cannot be doubted that when he said so. he referred to those two documents. Therefore merely because he did not refer to those documents and facts mentioned therein it cannot be said that there was no material before him to take action under Section 145 (1). Though that section requires him to state the reasons leading to his satisfaction for taking action under that Section, the omission on his part to do so in the present case cannot for the reasons stated above expose his orders to the criticism that they were passed mechanically in clear breach of the provisions of Section 145 (1) Criminal P.C. In R. H. Bhutani v. M. J. Desai : 1969 CriLJ13 . the Supreme Court dealing with a similar question in a case very similar to this, has observed thus:

One of the grounds on which the High Court interfered was that the Magistrate failed to record in his preliminary order the reasons for his satisfaction. The section no doubt requires him to record reasons. The Magistrate has expressed his satisfaction on the basis of the facts set out in the application before him and after he had examined the appellant on oath. That means that those facts were prima facie sufficient and were the reasons leading to his satisfaction.

6. In the present case also there can be no doubt that the learned Magistrate has expressed his satisfaction on the basis of the facts set out in the F.I.R. and the report that were before him. That means as stated by the Supreme Court in the case mentioned above, those facts were prima fade sufficient and were the reasons leading to his satisfaction. When such material was before him there is no justification to think that he passed the impugned orders lightly or mechanically without being satisfied as to the existence of the conditions required by that Section, merely because the ground for such action were not stated in those orders. However, the importance of mentioning the grounds or the reasons in the order hardly requires to be over emphasized and that is manifest from the language of the Section itself. But. in the instant case, it cannot be said that the omission to state the reasons has resulted in a serious breach of the provisions of that Section, for the reasons already stated. Therefore the ground on which the impugned orders are attacked is not sustainable. 7. In the result, this revision petition fails and the same is dismissed.

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