

Mohankumar and Nanjegowda Vs. State

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Court : Karnataka

Decided On : Nov-28-1984

Reported in : ILR1985KAR420

Judge : Kudoor, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145, 145(1) and 145(2)

Appeal No. : Crl. R.P. No. 593 of 1984

Appellant : Mohankumar and Nanjegowda

Respondent : State

Advocate for Def. : S.S. Koti, HCGP for R-1, ;T.J. Chouta, Adv. for ;B.V. Acharya, Adv. for R-2 and 3

Advocate for Pet/Ap. : Chandrashekaraiiah, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Kudoor, J.

1. The Taluka Executive Magistrate of Hassan Taluk initiated proceedings in case No. MAG. CR. 26/84-85 under Section 145 of the Code of Criminal Procedure (the Code) by passing a preliminary order dated 1-10-84 under Sub-section (1) of Section 145 directing the members of the I party (Petitioner) and the II party (Respondents 2 & 3) to appear before him either in person or by pleader on 10-10-84 at 3 p.m. and to put in written statement of their respective claims in regard to the fact of actual possession of the subject of dispute namely 'Hotel Vijaya' situated in the Old Bus Stand at Hassan. The Petitioners being aggrieved, have filed this Revision Petition challenging the validity and legality of the preliminary order and sought for setting it aside.

2. Sri Chandrasekharaiah, the Learned Advocate appearing for the Petitioners, raised two contentions for my consideration. They are :

1) The preliminary order under challenge being one relating to a dispute between the petitioners and respondents 2 and 3, over running of Hotel Vijaya, a non-vegetarian hotel, situated in Old Bus Stand at Hassan, the subject matter of the dispute falls outside the scope of Sub-section (1) of Section 145 as the dispute in question is not concerning any land or water or the boundaries thereof; and

2) The order in question does not conform to the requirements of Sub-section (1) as the Executive Magistrate who passed the order did not state the grounds or the reason for his satisfaction that there existed a dispute concerning land and that dispute was likely to cause a breach of peace in his order.

3. Countering the arguments advanced on behalf of the Petitioners, Sri Chouta, the Learned Advocate appearing for Respondents 2 and 3 forcefully contended that the preliminary order under challenge clearly shows that the dispute between the Petitioners and the Respondents 2 and 3 was overrunning of Hotel Vijaya, a non-vegetarian hotel, situated in old Bus stand at Hassan and as such the dispute was concerning a land within the enlarged meaning assigned to the expression 'land' under sub-section (2) of Section 145. His next sub-mission was that the preliminary order clearly indicates that the Magistrate was satisfied from the records and the report of the police that there existed a dispute between the parties over running of Hotel Vijaya which was likely to cause a breach of the

peace and when there was such material before him and from which he was so satisfied, the mere omission to state the grounds or the reasons for his satisfaction in his order, by itself would not vitiate the order passed under Section 145(1) of the Code. Thus he contended that there is absolutely no merit in the contentions urged on behalf of the Petitioners.

4. Sri S. S. Koti, the learned High Court Government Pleader appearing for Respondent-1 State, argued in support of the stand taken by Respondents 2-and 3.

5. I shall proceed to consider the points raised by Sri Chandrasekharaiah in the order in which they are formulated.

6. Point No. 1 : Chapter X-D of the Code relates to the disputes as to immovable property. Section 145 which is the very first section under this part, provides for the procedure when dispute concerning land or water is likely to cause breach of peace. Existence of a dispute likely to cause breach of the peace is the foundation of the Magistrate's Jurisdiction to initiate proceedings under Chapter X-D. Sub-section (1) of Section 145 consists of two parts. The first part requires that the Magistrate must be satisfied before initiating proceedings that a dispute concerning land or water or the boundaries thereof exists and that such dispute is likely to cause breach of peace. Once he is satisfied of these two conditions, then the second part of the section requires that 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 the Court in person or by pleader on a specified date and time and put in written statements in respect of their respective claims as to the fact of actual possession of the subject of dispute. It is thus seen that the first step the Executive Magistrate has to take for initiating proceedings under Chapter X-D is to make a preliminary order in conformity with sub-section (1) of Section 145 of the Code.

7. Sub-Section (2) of Section 145 explains the expression 'land or water' for the purpose of Section 145 which includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property. It is obvious from sub-section (2) that the expression 'land or water' is used in its widest meaning

and when it refers to buildings, markets and fisheries, it takes in the rents or profits realisable from such property. When the subject matter of the dispute in this case namely a dispute over the running of a non-vegetarian hotel in a building situated in Old Bus Stand at Hassan is considered in the light of the provisions contained in sub-section (2) of Section 145, certainly the subject matter of the dispute between the parties was concerning land within the meaning of sub-section (1). In this view of the matter, I find no substance in the first contention urged for the Petitioners.

8. Point No.2: This takes me to the only remaining question whether the impugned order is legally wrong for failure to record the grounds of satisfaction in the order by the Magistrate. For better appreciating this contention, it is necessary to reproduce the impugned order. It reads :

'Whereas it has been reported by the Sub-Inspector of Police, Hassan City Police, Hassan, vide F-I.R. in Cr. No. 256/84 dated 16-9-84 that there is every likelihood of breach of peace in the locality due to dispute between the two parties of respondents over the running of Hotel Vijaya, a non-vegetarian Hotel, situated in Old Bus Stand, Hassan. The sworn statement of the Sub-Inspector of Police has been recorded on 27-9-1984.

Perused the records and report of the Police. I am satisfied with the report of the police and I am further satisfied that there is every likelihood of breach of peace because of the dispute between the respondents over the running of the above said hotel.

Now, therefore, in exercise of the powers, conferred in me under Section 145(1) Cr.P.C., I.G.C. Gangaiah, Taluka Executive Magistrate, Hassan Taluk, Hassan, hereby call upon both the parties to appear before this Court in person or by Pleader on 10-10-84 at 3 P.M. and to put in written statements of their respective claims in regard to the fact of actual possession of the subject of dispute, i.e., 'Hotel Vijay' situated in the Old Bus Stand at Hassan.'

Now the question for consideration is whether the order fulfils the requirements of the mandate of sub-section (1) of Section 145, In R.H. Bhutani -v.- Mani J. Desai, : 1969 CriLJ13 the Supreme Court while considering the legality of an order made

under sub-section (1) of Section 145 of the Code observed thus :

'The Section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is liable to cause breach of peace. But once he is satisfied of these two conditions, the Section, requires him to pass a preliminary order under sub-section (1) and thereafter to make an inquiry under sub-section (4) and pass a final order under sub-section (6).'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 recognised 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 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. The High Court in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.

The question is whether the preliminary order passed by the Magistrate was in breach of Section 145(1) that is, in the absence of either of the two conditions precedent. 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 s-t 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.'

9 Relying upon the decision in Bhutani's case (supra), this Court (Range Gowda, J.) in Sukumar -v.- State, 1972 (I) Mys. L.J. 349 observed that where the Magistrate had before him the F.I.R. and the report of the Sub-Inspector, allegations in which were such as to satisfy the Magistrate to take action under Section 145(1), it cannot be said that the omission to state thereasons in the order itself has resulted in serious breach of the Section.

10. In *Narasimha -v.- State of Karnataka*, 1980 (I) K.L.J. 154 the same question came up for consideration whether omission to state the reasons in the preliminary order constitutes breach of sub-section (t) of Section 145. The validity of the preliminary order under consideration in this decision, omitting the preamble portion as well as the description of the properties which were the subject of dispute, reads :

I have gone through the report of the Police Officer. I am satisfied from his report and upon other information that a dispute likely to cause a breach of the peace exists concerning the above lands within the local jurisdiction of this Court. Therefore, I required the parties concerned in this dispute to attend this Court in person or by pleader on 24-10-79 at 3 P.M. at Taluk Office, Mangalore and put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.'

It was contended for the petitioners that this preliminary order which was bereft of the reasons or the grounds upon which the Magistrate drew his satisfaction was an order in breach of the requirements of sub-section (1) of Section 145. Repelling the contention, Venkatesh, J. relying upon the ruling of the Supreme Court in *Bhutani's Case* and the decision of this Court in *Sukumar's Case* , reiterated the position in law by observing that where the order stated that the Magistrate was satisfied from the police report and from the other information available to him that there existed a dispute likely to cause a breach of the peace concerning the lands in question, the order satisfies the requirements of law and the omission to state the reasons by the Magistrate in the order itself will not be fatal, if, otherwise, there are materials to show that there existed facts which were, prima facie, sufficient to invoke his powers under Section 145(1) Cr.P.C.

11. Now turning to the facts of the case and the preliminary order (extracted earlier) it can be seen that the Learned Magistrate was satisfied from the report of the police and other records including the sworn statement of the Sub-Inspector that there was a dispute between the parties existed over the running of the Hotel Vijaya, a non-vegetarian hotel situated in the Old Bus Stand at Hassan and that dispute was likely to cause breach of peace. The report of the Sub-Inspector, his

sworn statement and the other records collected by the Sub-Inspector in the course of his enquiry are all found in the records of the Court below and which were available for perusal at the time of hearing of this Petition. All these materials show that there existed facts which were prima facie sufficient for the Learned Magistrate to invoke his powers under Section 145(1) of the Code. The impugned order shows that the Learned Magistrate having considered the police report and the other documents drew his satisfaction required of him under the provisions of law both regarding the existence of a dispute concerning the land and that the dispute was such that it was likely to cause breach of peace. The mere fact that the Magistrate failed to state the reasons in the order itself would not be total. In that view, I am of the opinion that the impugned order is unassailable as it is in full conformity with the provisions of sub-section (1) of Section 145 of the Code and the ratio of the decision of the Supreme Court as well as of this Court cited supra.

12. Sri Chandrasekharaiah, however, strongly placed reliance in support of his contention on two rulings one of the Madras High Court in P. Mannadha -v.- V. Marappa Goundar, : AIR1969 Mad411 and another of this Court in Major Mirza v.- State, 1979(2) K.L.J. 36. The facts of the case in Mannadha's case were these :

13. The First Class Magistrate, Sankari, passed a preliminary order under Section 145(1) of the Code and issued notice to both the Petitioners and the Respondent on 10-4-67, six months after the report was placed before the Court by the police regarding the likelihood of the breach of the peace. Thereupon, the Petitioners filed an application before the Sub-Divisional Magistrate, Sankari to whose Court the matter had been transferred by then, praying that the proceedings may be dropped in view of the fact that the learned Magistrate who issued the preliminary order under Section 145(1) had not stated that he was satisfied regarding the likelihood of the breach of the peace. The Sub-Divisional Magistrate dismissed the application filed by the petitioners and issued a fresh preliminary order on 12-9-67 calling upon both the parties to put in written statements of their respective claims. It was against this order the Cr. R.P. was filed

14. It was contended on behalf of the Petitioners that the second preliminary order passed by the Sub-Divisional Magistrate was vitiated as he had not stated the

grounds for his satisfaction as required under Section 145(1) of the order ; that due compliance of sub-section (1) is mandatory; that the report submitted by the police to the Ex-Officio First Class Magistrate, Sankari on the basis of which the preliminary order dated 12-9-1967 was passed was nearly about one year before the order was passed, and that it could not be said from the order that the Magistrate was satisfied that there thus existed a dispute which was likely to cause breach of peace on the date of the passing the preliminary order Dealing with the requirements of sub-section (1) of Section 145 of the Code, Krishna swamy Reddy, J. observed thus:

'It is, therefore, necessary under Section 145(1) Criminal P.C., that the Magistrate having jurisdiction shall make an order in writing that he is satisfied either from a police report or other information that a dispute likely to cause a breach of the peace exists and state the grounds of his satisfaction before requiring the parties concerned concerning in such dispute to attend his Court and put in written statements. This provision of making the order in writing and stating the grounds of his satisfaction appears to be mandatory. The words 'shall make an order in writing stating the grounds of his being so satisfied' would clearly indicate that the order must be in writing and the grounds for satisfaction also must be stated. Unless the grounds are stated in the order itself, it will be difficult to test the correctness or otherwise of the order passed by the Magistrate. So, the preliminary order should state clearly the reasons and grounds on which the satisfaction is based and that the Magistrate had applied his mind in passing the preliminary order.'

However, in the case before his Lordship there was no material on record to show that there existed facts which were prima facie sufficient to invoke the powers of the Magistrate under Section 145(1) of the Code for making the preliminary order. This is clear from the observation of the learned Judge reads :

'This order shows that the Sub-Divisional Magistrate relied upon the report submitted by the Inspector of Police before the Revenue Divisional Officer for satisfying that a breach of the peace existed on the date of passing the preliminary order. The Sub-Divisional Magistrate himself did not call for a report from the

police at the time of passing the order though he found that the preliminary order passed by the Ex-Officio First Class Magistrate was defective. He again had fallen into an error, in perusing the report submitted by the Police Officer on 7-10-66. The Learned Sub-Divisional Magistrate has not even stated that he perused the report and was satisfied with the existence of breach of peace. It is significant to note that the preliminary order by the Sub-Divisional Magistrate was passed on 12-9-1967, nearly about one year after the police report was submitted. The preliminary order does not say that he had any further information subsequent to the report submitted by the police that the likelihood of a breach of peace continued and on the date of the preliminary order the dispute existed. A preliminary order passed long after the information, the Magistrate had in respect of the breach of the peace cannot be sustained unless the Magistrate was satisfied from any further information or enquiry that a breach of the peace existed on the date of the preliminary order.'

15. Thus, it is clear from the above that the preliminary order was quashed on the ground that there was no material available before the Sub-Divisional Magistrate for his satisfaction as required under sub-section (1) of Section 145 and not on the ground that there was omission on the part of the Magistrate to state the grounds of his satisfaction in the order. Thus, it seems to me that this decision will not help the Petitioners.

16. In Major Mirza's case one of the questions that came up for consideration before this Court was the validity of an order dropping the proceedings in exercise of the powers under sub-section (5) of Section 145 initiated on the basis of a preliminary order passed under sub-section (1) of Section 145. Having considered the question and come to the conclusion that the Magistrate could not have dropped the whole proceedings in exercise of the powers under sub-section (5) of Section 145, this Court proceeded further to consider whether the Sub-Divisional Magistrate had acted within his powers in issuing the preliminary order, even though such a question was not raised by either of the parties. The portion of the preliminary order passed by the Sub-Divisional Magistrate in the case contained in the last two paragraphs of the order excluding the two earlier preliminary paragraphs wherein the facts pertaining to the report of the S. I. of Police in regard

to the dispute about the possession of the premises in question and recording of the sworn statement of the S.I. of Police were narrated, reads:

'Perused the F.I.R. and the sworn statement filed by the Sub-Inspector of Police , Shoolay Police Station and satisfied that there is a dispute in respect of the room described above and if the said dispute is continued beyond any further that may lead to breach of peace and danger to lives of the respondents.

In these circumstances, both the respondents are hereby called upon to show cause as to why they should not be restrained from entering the said room until further orders. They are also directed to produce all the documents and any, other materials in support of their claim; Further, they are also directed to appear before this Court on 26-9-1977 at 2-30 P.M. to show cause ; failing which exports orders will be issued.'

The Learned Judge (Nesargi, J) in dealing with the above preliminary order observed :

'The Sub-Divisional Magistrate has expressed in unequivocal term that he was satisfied that there was a dispute in respect of the room described and that if this said dispute continued, it may lead to breach of peace and danger to the lifts of the Respondents- He has not stated anywhere any grounds for his being so satisfied. Reading of sub-section(1) of Section 145 of the Code makes it abundantly clear that whenever a Sub-Divisional Magistrate is so satisfied, he is mandatory required to state the grounds of his being so satisfied. That has not been done.'

There is no indication from the decision whether the F.I.R. and the sworn statement filed by the S.I. of Police contained allegations which were such as to satisfy the Magistrate to take action under Section 145(1). The learned Judge, while observing that the Sub-Divisional Magistrate had not stated the ground for his being so satisfied in the order which was mandatory and required to be stated, did not refer to the F.I.R. and the sworn statement filed by the S.I. of Police to find out whether the allegations contained therein were such as to satisfy the Magistrate to take action under Section 145(1). Besides, in view of the decision of the Supreme Court in Bhutani's case and also the preponderance of judicial view

expressed by this Court in Sukumar's case and Narasimha's case, the view expressed in Major Mirza's case cannot be said to be good law. Even otherwise, this decision also does not help the Petitioners as the facts of the case are different from the facts of the present case.

In the result, for the reasons stated above, the Revision Petition fails and the same is dismissed.

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