

Ramarao Vs. Shivram and ors.

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SooperKanoon Citation : sooperkanoon.com/427063

Court : Andhra Pradesh

Decided On : Oct-06-1953

Reported in : 1954CriLJ671

Judge : Srinivasachari, J.

Appellant : Ramarao

Respondent : Shivram and ors.

Judgement :

ORDER

Srinivasachari, J.

1. This is a revision petition arising, in proceedings under Section 145, Cr. P. C. The revision petitioner was the first party in the lower Court. The brief facts necessary for the determination of this revision petition are that an application was filed by the petitioner before the Magistrate in Theer 1357F. stating that the other party was interfering with his possession; that there was apprehension of breach of peace and, that, therefore, proceedings under Section 145, Cr. P. C., should be started. It is stated that the Magistrate passed an order directing the attachment of the suit land, on 24th Amardad 1357P. But the bailiff who went to execute the order of attachment submitted a report that it was not possible-to execute the warrant of attachment as the other party was threatening to use force. This was the state of affairs when the Police Action started and it was not until 28th May

1952 that this case saw the light of day. On the 28th of May 1952, the Magistrate passed an order to the following effect: 'The file has been taken out from the record room; the suit land is now under the supervision of the Government; therefore, it is leased out for a year.' He also directed notice to be issued to the parties and posted the case for hearing to the 6th of June 1952. Against this order the petitioner filed a revision petition to this High Court which is now being decided.

2. In the meantime the petitioner obtained orders of stay from this Court directing the Magistrate to stay further proceedings in the lower Court. Three orders were passed by this Court, one on 30th July 1952, another on 20th April 1953 and another on 22nd April 1953 as the petitioner found that the Magistrate was not fully complying with the orders of the High Court. Now I understand that the Magistrate has fully complied with the orders of the High Court and proceedings have been stayed completely. Therefore in so far as the stay of proceedings in the lower Court is concerned, there is no grievance.

3. As regards the merits of the revision petition, it is urged by the learned advocate for the petitioner (1) that the order passed by the Magistrate on 28th May, 1952 stating that the property was already under the supervision of the Court was Wrong because there was no such order passed and (2) that under Section 145, Cr. P. C., it is essential that there ought to be imminent apprehension of breach of peace and even if there was any apprehension in 1357 F, it could not be said that the same continued till 28th of May 1952 when the Magistrate started proceedings again.

4. It would be desirable to take up the second argument first. As regards this contention I am of opinion that once the Magistrate has given a finding to the effect that there is apprehension of breach of peace and that he has Jurisdiction to take proceedings under Section 145, Cr. P. C., he can continue the proceedings. It is not necessary that at each stage he should be satisfied that there exists an Imminent apprehension of breach of peace. Therefore this argument, to my mind, is not sustainable.

As regards the first argument that there was no record that the land had been taken under Government supervision, I feel that this contention is well founded because the mere fact that the bailiff was asked to attach the property and he returned the warrant unserved expressing his inability to execute it, cannot, in my opinion, amount to the warrant having been executed and it cannot, therefore, be regarded that the property was taken under Government supervision. Therefore, the order passed by the Magistrate on the 28th May 1952 on the assumption that the property was under Government supervision is wrong and is set aside. In the view that I have taken the Magistrate can continue the proceedings. This revision is partly allowed. The case will now go back to the Magistrate for taking further proceedings according to law. The parties will be relegated to the position as on 28th May 1952.