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Court : Allahabad

Decided On : Dec-06-1913

Reported in : (1914)ILR36All143

Judge : Ryves, J.

Appellant : Emperor

Respondent : Ram Lochan and ors.

Judgement :

Ryves, J.

1. This is an application in revision from an order purporting to have been passed under Section 145 of the Code of Criminal Procedure by the Sub-Divisional Magistrate of Azamgarh, dated the 3rd of July, 1913. The facts of this case are somewhat peculiar, and, so far as I know, are not covered by any of the very numerous rulings which have been reported under the section. There is a market in the town of Kopaganj in the district of Azamgarh on land which belongs to Musammat Dhan Debi, a lady who resides in Benares. The police reported to the Sub-Divisional Magistrate that a breach of the peace was likely to-take place between some of the servants of Musammat Dhan Debi and one Rameshwar, who had been appointed chaudhri of the market, about the collection of certain dues. The Magistrate instituted proceedings under Section 107. He examined the Inspector as a witness, and on that officer deposing that the servants of

Musammat Dhan Debi claimed to collect these dues as part of the zamindari of their mistress, came to the conclusion that the case 'could not appropriately be proceeded with under Section 107 of the Criminal Procedure Code' and that 'there was no alternative but to cancel the order passed under Section 107, Criminal Procedure Code, and to proceed under Section 145.' Fresh notices in the terms of Section 145 were drawn up, and Ram Lochan, Chandar Rai, Rupa and Gopi (the servants of the lady) were served with notices as one party and Rameshwar was served with notice as the other party. The learned Magistrate, intentionally, he says, omitted to make Musammat Dhan Debi a party to the proceeding, firstly because she was a lady of respectable position and 'it would be scandalous to make her figure as a party to a criminal proceeding,' and secondly 'as she lives in Benares it is very probable that she knew nothing whatever about what was going on in the market at Kopaganj.' Having these two parties before him, the Magistrate took their evidence and found 'that Rameshwar had been appointed by the banias and other dealers in Kopaganj to act as chaudhri and that these persons agreed to pay him at the the rate of two pice per head of cattle brought to the market laden with articles for sale.' The servants of Musammat Dhan Debi, he found, 'were ambitious to stop him and enjoy the dues themselves.' He went on to find that preparations had been made to cause a breach of the peace, and he accordingly came to the conclusion that Rameshwar was in possession of the disputed market dues, that is, two pice in the rupee and his order is 'Rameshwar is in possession of the market dues as chaudhri and Ram Loohan, Chandar Rai, Rupa and Gopi should not disturb his possession unless he is evicted therefrom in due course of law.'

2. In revision before me it is urged that this order is bad for want of jurisdiction on three grounds. Firstly, that the Magistrate having taken action under Section 107 of the Code of Criminal Procedure had no jurisdiction subsequently to cancel that order and take proceeding under Section 145. In my opinion this objection has no force, provided that the proceedings are otherwise justified under the section. It is next objected that the subject-matter in dispute was not one within the purview of the section; and thirdly that in any event the proper parties were not before the court. The dispute in that case admittedly does not concern any tangible immovable property. It can only come within the scope of the section if Clause 2 of

Section 145 covers the case, Land is said to include 'markets' and 'the rents or profits of any such property.' I think it would be unduly stretching the definition to make it cover this case. There is no dispute in this case to the laud or to the market. Both admittedly belong to Musammat Dban Debi. What her rents and other rightful profits from this market may be. is also not in dispute. According to the finding of the Magistrate, the baniaa and other persons who come to the market to sell their goods there, appointed Rameshwar chaudhri of the market, an office which imposed on him certain duties, such as regulating the business of the market and so forth. They agreed to remunerate him for his services by allowing him to collect two pice per head of cattle brought into the market laden with articles for sale. This payment to Rameshwar apparently was purely voluntary on their part and was in no way connected with the ordinary rents and profits of the market and was not a perquisite of the zamindar, but was a personal matter between the banias and the chaudhri. Instead, however, of paying him a fixed sum out of their pockets, they allowed him to collect his remuneration as stated. The servants of Musammat Dhan Debi who were employed by her to collect her legitimate rents and profits sought to deprive Rameshwar of this source of his income, and, as the court finds, wished to enjoy it themselves, and apparently without any justification. It seems to me, therefore, that the dispute in this case did not relate to the 'profits' of a market, within the meaning of the section, As to the third objection, it seems to me that if there was truth in the statement of these servants of Musammat Dhan Debi that they were acting in the interests and for the benefit of Musammat Dhan Debi, then she must be deemed 'a party concerned in the dispute' and as such was a necessary party to these proceedings. If she had been made a party, she would either have supported the action of her servants, and in that case, she certainly had a right to be heard and in fact was a necessary party. If, on the other hand, she had repudiated the action of her servants as being beyond the scope of their authority (as indeed their action was as found by the court) then in all probability she could have put a stop to their illegal behaviour for the future and no orders of the court would have been necessary.

3. As it is the order of the court secures no permanent result. It is a personal order binding four individual servants of the lady. If she is really desirous of obtaining the dues now paid to Rameshwar, all she has to do is to re-place these individuals by

others who will not be bound by the order and the whole trouble will begin again.

4. If, on the other hand, the finding had been against Rameshwar, all that he need have done, was to get a substitute appointed in his stead and so proceedings might go on ad in finitum.

5. In my opinion Section 145 was not intended to meet a case precisely like this one, and on the second ground taken, I set aside the order as being one without jurisdiction under that section.

6. In my opinion Section 107, Criminal Procedure Code, was the appropriate section, and it will be open to the court to take proceedings under that section, if it is of opinion that such action is called for.

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