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Murru Vs. the State

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Court : Allahabad

Decided On : May-04-1954

Reported in : AIR1955All95; 1955CriLJ270

Judge : Randhir Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 145, 145(1) and 561A

Appeal No. : Criminal Reference No. 35 of 1952

Appellant : Murru

Respondent : The State

Advocate for Def. : B.P. Misra, Adv. for Opposite Party Nos. 3 to 6 and 8

Advocate for Pet/Ap. : Kalbe Mustafa, Adv.

Judgement :
ORDER

Randhir Singh, J.

1. This is a criminal reference by the Sessions Judge of Rae Bareli.

It appears that an application was made under Section 145, Criminal P. C. by one Murru against Sheo Dulari, Sheo Kumar and others on the allegation that there was an apprehension of a breach of the peace between the parties in respect of

certain lands.

The Sub-Divisional Magistrate, Dalmau, before whom the application was presented, directed theStation Officer, Jagatpur, to inquire and report. He also directed the Station Officer to attach the property if he found any apprehension of a breach of the peace.

The Station Officer submitted his report on 14-11-1950, in which he mentioned that there was an apprehension of a breach of the peace and that he had made the attachment of the property as directed by the Sub-Divisional Magistrate.

On the report of the Station Officer the Sub-Divisional Magistrate ordered that notice should go to the parties.

The case was thereafter transferred to Sri Samarjit Singh, Special Magistrate for disposal. Written statements were filed by both the parties. At that stage it appears that Sri Samarjit Singh found out that the Sub-Divisional Magistrate had not recorded the preliminary order about his satisfaction about an apprehension of a breach of the peace which he should have done under Section 145 (1), Criminal P. C. He, therefore, proceeded to inquire if there was an apprehension of a breach of the peace and ultimately came to the conclusion that there was no apprehension of a breach of the peace and accordingly rejected the application filed under Section 145, Criminal P. C.

In the same order, however, he directed the attached property to be made over to Sheo Kumar. The parties went in revision to the Sessions Judge. The Sessions Judge has now recommended that the oraer passed by the Magistrate with regard to the delivery of possession to Sheo Kumar should be set aside as he had no jurisdiction to pass such an order.

2. It has been held in a number of cases from time to time that a Magistrate acquires jurisdiction in a case under Section 145, Criminal P. C., only after he is satisfied that there was prima facie an apprehension of a breach of the peace. If a Magistrate is not satisfied of a likely apprehension of a breach of the peace, he cannot proceed further with the case. In the present case it appears that the Sub-

Divisional Magistrate proceeded with the case and ordered attachment without first coming to a conclusion that there was a likelihood of a breach of the peace. Sri Samarjit Singh to whom the case was subsequently transferred tried to rectify the omission and proceeded to inquire if there was a likelihood of a breach of the peace and he came to the conclusion that there was no such apprehension. He was, therefore, perfectly within his rights to reject the application.

The question arises whether he had a right thereafter to order delivery of possession to any particular party. This point has also arisen in some cases and it has been held that the jurisdiction of the Magistrate comes to an end with the proceedings under Section 145, Criminal P. C. All that he can do thereafter is to order delivery of possession of the attached property if there ia already something on the record to indicate as to who was in possession of the property when it was attached by the police. The Magistrate cannot enter into an inquiry and decide as to who Was in possession after having cancelled the proceedings under Section 145, Criminal P, C. The learned Magistrate, was also therefore, not entitled to decide as to who was in possession and then direct delivery of possession to him. He should have simply withdrawn the attachment, or if there was some moveable property in the custody of the Court or of the Police, he should allow it to remain under attachment till the parties established their claim to it.

This Court, however, has power to pass suitable orders in such cases also under Section 561A, Criminal P. C. The reference is therefore accepted and the order of the learned Special Magistrate directing delivery of the attached property to Sheo Kumar is set aside. If there is any moveable property in the custody of the police it may be allowed to remain under attachment till such time as the parties or any of them establish their claim to it by a Civil action. The attachment of the immoveable property shall cease.

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