

Mt. Ram Piari and ors. Vs. Dankua

Mt. Ram Piari and ors. Vs. Dankua

SooperKanoon Citation : sooperkanoon.com/459028

Court : Allahabad

Decided On : Nov-09-1948

Reported in : AIR1949All402; 1949CriLJ655

Judge : Seth, J.

Appellant : Mt. Ram Piari and ors.

Respondent : Dankua

Judgement :

ORDER

Seth, J.

1. This is a reference by the Sessions Judge of Hamirpur recommending that an order passed by a Magistrate under S, 145, Criminal P. C. be set aside. There is nothing on the re-cord to indicate that the learned Magistrate had any information before him on the date when he called upon the parties to put forward their respective claims to satisfy him that there was any likelihood of a breach of peace. Learned Magistrate has not said anything on this point even in the explanation which he has submitted consequent on the order for reference. learned Counsel opposing the reference has also not been able to point out anything on the record from which it may be inferred that the learned Magistrate had any material upon which he could be satisfied that there was any likelihood of a breach of peace. All that the learned Counsel has referred to is the application made by his client for

proceedings being taken under Section 145, Criminal P. O. An application contains nothing but the allegations of the parties. learned Counsel for opposite parties has contended that the fact, that a notice signed by the Magistrate was issued requiring the parties to put in their respective claims and that it was mentioned in that notice that there was likelihood of breach of peace, indicates that the Magistrate had applied his mind to this aspect of the case and had come to form an opinion that there was a likelihood of a breach of peace. I am unable to draw any such inference from a notice which is prepared in the office and signatures to which are appended as a matter of routine work. A Magistrate acquires jurisdiction to proceed under Section 145, Criminal P. C, only when there is a likelihood of a breach of peace. If there is material before a Magistrate upon which he feels satisfied that there is a likelihood of a breach of peace, an omission to record a formal order as required by Section 145(i) may be treated as a mere irregularity which can be cured under Section 637, Criminal P. O, : (see Kapur Chand v. Suraj Prasad : AIR1933 All264 , but when there is no such material on the record and when there is nothing to indicate that the Magistrate has applied his mind to this aspect of the question, the very foundation of the jurisdiction of the Magistrate is affected.

2. For the reasons indicated above, I am of the opinion that the proceedings before the Magistrate were illegal and the order passed by the learned Magistrate cannot be sustained. The learned Sessions Judge has further commented upon the findings of fact recorded by the Magistrate and has recommended that the order of the Magistrate should be set aside also on the ground that the findings of fact recorded by the Magistrate are not correct. He should have known that this Court does not consider question of facts in the exercise of its revisional jurisdiction. Nothing has been said in the order of reference to indicate that this case is outside the ordinary rule.

3. For the reasons indicated above, I accept the recommendation of the learned Sessions Judge, set aside the order of the Magistrate dated 7th November 1947, and direct the proceedings under 8.145, Criminal P. C. to be quashed.