

Molkhan Vs. State

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Court : Allahabad

Decided On : Sep-28-1951

Reported in : AIR1953All259

Judge : Agarwala, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107 and 145

Appeal No. : Criminal Revn. No. 1609 of 1950

Appellant : Molkhan

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.N. Varma, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Agarwala, J.

1. One Asa Ram of village Taharpur Bhabisa in police circle Kandhla approached the District Magistrate with an allegation that the applicant and other persons threatened to take forcible possession over his Khudkasht lands by disturbance of

peace and prayed that the applicant and other persons may be bound down under a. 107, Criminal P. C.

2. The District Magistrate sent for a report from the Tahsildar who, after holding an enquiry made a report supporting the case of the complainant. The District Magistrate then ordered the Station Officer, Kandhla, to take necessary steps against the applicant and other persons under Section 107, Criminal P. C. The police submitted a report to the Sub-Divisional Officer who started proceedings under Section 107 against the applicant. The learned Magistrate being satisfied about the danger of peace issued a preliminary order and notice under Section 112. He also took action under Section 117, Criminal P. C., because in his opinion the case was one of emergency. Then after taking evidence of both sides he confirmed the preliminary order.

3. The applicant's case was that he was a tenant of the plots in dispute on behalf of the complainant on a 'batai' rental from the beginning of 1355F, that he was not at all likely to commit any breach of peace and that, on the other hand, the complainant wanted to eject him by force. The complainant's story was believed and the defence case was disbelieved. The applicant appealed against the order of the Magistrate to the Sessions Judge who dismissed the appeal.

4. In this revision it has been urged that the Magistrate should not have proceeded against the applicant under Section 107, Criminal P. C., but should have taken recourse to Section 145, Criminal P. C. In support of this contention, my attention has been drawn to the case of *Bam Charan Singh v. Basudeo Dusadh*, A. I. R. 1949 Pat. 482, in which case Dass J. expressed the opinion that :

' Where there is a dispute concerning land which, is likely to cause an apprehension of a breach of the peace, the proper procedure is to apply Section 145 and decide the question of possession once for all. It is illegal on the part of the Magistrate to convert the proceeding under Section 145 into a proceeding under Section 107 without coming to a finding on the question of possession after taking evidence in the proceeding under Section 145.'

In that case a proceeding was started under Section 145, Criminal P. C. Here the facts are different as no proceedings under Section 145 were started. There was a proceeding under Section 107 alone before the Court below. Clause 10 of Section 145 expressly reserves the power of a Magistrate to proceed under Section 107 notwithstanding the provisions of Section 145. Where, therefore, no application under Section 145 has been presented and the only application presented is under Section 107, the Magistrate must decide the case having regard to the provisions of Section 107. It is open to him to initiate proceedings under Section 145 of his own accord if he is satisfied from the police report or other information that the dispute likely to cause breach of peace exists concerning any land. But so long as he does not proceed under Section 145, he must decide the application made to him under Section 107. The vital difference between Sections 107 and 145 is that under Section 107 commission of the breach of peace is alleged to arise from the side of the person against whom an application is made, and under this section, therefore, the Magistrate must be satisfied that the person accused was likely to commit a breach of peace or to do any wrongful act that may occasion a breach of peace; while under Section 145 this is not necessary to be proved. What is necessary to be established is that there is a dispute which is likely to cause a breach of peace. The breach of peace may be occasioned by any party to the dispute. Where it is not clear that the opposite party in an application under Section 107 is likely to commit a breach of peace, but the Magistrate is satisfied that there is a dispute concerning land which is likely to cause a breach of peace, the breach of peace being committed either by the applicant or by the opposite party, there is a case for proceedings under Section 145.

5. In the present case, both the Courts below found that the applicant in revision was likely to commit a breach of peace. He was, therefore, rightly bound down under Section 107.

6. There is no force in this revision. It is dismissed.

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