

Dulla Vs. the State Through Dwarka and ors.

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Court : Allahabad

Decided On : Jul-21-1952

Reported in : AIR1953All341

Judge : Beg, J.

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

Appeal No. : Criminal Ref. No. 17 of 1952

Appellant : Dulla

Respondent : The State Through Dwarka and ors.

Advocate for Pet/Ap. : Farooq Hasan, Adv.

Disposition : Reference accepted

Judgement :

ORDER

Beg, J.

1. This is a reference by the learned Additional Sessions Judge of Unnao recommending that the order passed by Sri Niaz Ulla, Sub-Divisional Magistrate, Hasanganj Unnao, under Section 145, Criminal P. C., directing that the disputed property be released in favour of the opposite parties Dwarka and others be set

aside.

2. It would appear that the applicant Dulia had presented an application under Section 145, Criminal P. C., against Dwarka and others in respect of plot no. 138 detailed therein alleging that the plot in question was his tenancy land and that he was in possession of it. After calling for a police report the trial Court passed an order on 13-11-1950, that the said plot and the crop standing thereon be attached. Both the parties were called upon to file written statements in the case. Each of them claimed to be the tenant in possession of the plot in dispute. They were required to produce evidence in support of their case.

3. The learned Magistrate minutely examined the evidence adduced by each of the parties and as a result of the findings thus arrived at on their respective claims and on the question of possession finally passed an order releasing the property in favour of Dwarka and others. The applicant Dulla went up in revision against the said order. The revisional Court has made a reference to this Court for setting aside the impugned order. I am of opinion that this reference must be accepted.

4. The order of the learned Magistrate shows that there was nothing on the record which could suggest that there was any danger of a breach of the peace. Under the circumstances the learned Magistrate found that there was no likelihood of a breach of the peace in respect of the plot. In spite of it the trial Court went through the entire gamut of procedure prescribed by Section 145, Criminal P. C., for the purpose of determining in whose favour the release order should be passed.

5. The procedure adopted is unwarranted by law. Once it is found that there is no danger of a breach of the peace, the foundation for action under Section 145, Criminal P. C., disappears. The Magistrate has no jurisdiction to proceed further and must immediately stay his hand. He cannot convert himself into a civil Court and go on to decide the case on merits or to give a finding either on the question of title or on the question of possession for any ulterior or subsidiary purpose. The only course open to him is to cancel his initial order and to quash all proceedings under Section 145, Criminal P. C.

6. I accordingly accept the recommendation of the learned Additional Sessions Judge of Unnao, set aside the order and direct that the entire proceedings under Section 145, Criminal P. C., shall stand cancelled.

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