

Niranjan Lal Vs. Emperor

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Court : Allahabad

Decided On : Dec-04-1935

Reported in : AIR1936All141; 160Ind.Cas.870

Appellant : Niranjan Lal

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. This is a reference by the learned Additional Sessions Judge of Aligarh, recommending that an order made by a Magistrate in the district of Etah under Section 145, Criminal P.C., should be set aside in part. There was a dispute about a house and the police made a report to the Magistrate that there was a serious danger of a breach of the peace. The Magistrate passed an order on 4th August 1935 that the house as well as the moveables in it should be attached and placed in the possession of a receiver. On 29th August 1935 he seems to have had some doubt about the legality of his previous order and he cancelled it in so far as it referred to moveable property. On 30th August 1935 he heard the parties, and came to the conclusion that the order of the 24th August should be restored. He thereupon restored it. It is suggested that that order was illegal in so far as it referred to moveable property. The Magistrate has explained that he intended only

to attach such moveable property as was inside the house. I do not think it is necessary to vary the order of the Magistrate; but it is necessary to explain it so that it may not be misconstrued. It is the house that has been attached and of course once a house is attached and the Court is deemed to be in possession of it, neither party can enter it or go into the premises appurtenant to it to remove any moveable property which may be on those premises.

2. The opposite party who moved the Sessions Court in revision has urged that there are some cattle belonging to him and some personal belongings in the house or in the premises appurtenant to it. He says that this property cannot come under attachment. It may be that this property cannot be attached; but if it is in a building which is in the possession of another, the person claiming it certainly cannot go into that building to remove it. The proper course for the person 'who has moved the Sessions Court is to obtain an order from the Magistrate permitting him to enter upon the premises for the purpose of removing anything which he may satisfy the Magistrate is his personal property. There is no need to pass any other order in these proceedings at this late stage.