

Gangadhar Vs. State

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Court : Allahabad

Decided On : Dec-23-1949

Reported in : AIR1952All580

Judge : Sapru and ;Seth, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145 and 145(1)

Appeal No. : Criminal Ref. No. 1050 of 1949

Appellant : Gangadhar

Respondent : State

Advocate for Def. : A.G.A. and ;R.B. Misra, Adv.

Advocate for Pet/Ap. : Kartar Narain Agarwala, Adv.

Judgement :

Seth, J.

1. This is a reference by the learned Ses. Judge of Mathura recommending that an order passed by a Mag. be modified.

2. The aforesaid order was passed in proceedings started under Section 145, Cr. P. C. which were started on an application made by applicant Gangadhar stating that there was dispute about the possession of a piece of land on which a shop

was being reconstructed & that the opposite parties were likely to commit a breach of peace. Thereupon enquiry was made from the Station Officer of Baldeo police station & a report was received from him to the effect that there was a likelihood of a breach of peace. When notices were issued to the opposite parties, they put forward a written statement in which they alleged, inter alia, that there was no likelihood of any breach of peace. The learned Mag. recorded a finding that there was no apprehension of any breach of peace from the side of the opposite parties.

3. It is true that there is no specific finding to the effect that there was no apprehension of breach of peace from either side but having regard to the fact that it was not even suggested that there was any apprehension of breach of peace from the side of the applicant and also to the fact that it was denied by the opposite parties that there was any apprehension of breach of peace, we have no doubt that the learned Mag. intended to hold that there was no likelihood of breach of peace. The learned Ses. J. has interpreted the finding of the learned Mag. like that, & we think that he was right in his construction of that finding.

4. Having found that there was no likelihood of breach of peace, the learned Mag. proceeded to order that the opposite parties would remain in possession until evicted in due course of law. The learned Ses. J. says in his order of reference that this order of the Mag. is illegal, on the ground that having arrived at a finding, that there was no likelihood of any breach of peace, the learned Mag. had no jurisdiction to make the aforesaid order.

5. The view of the learned Ses. Judge is supported by the decision of this Court in *Ram Piari v. Dankua* 1949 A. L. J. 16. It was held in that case that the jurisdiction of a Mag. to make an order under Section 145, Cr. P. C. depends upon there being a likelihood of a breach of peace. We concur in this view. Section 145 (5), Cr. P. C. reads as follows:

'Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; & in such case the Magistrate shall cancel his said order, & all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-section (1) shall be final.'

6. Therefore when a Mag. finds, that there is no likelihood of any breach of peace, the law requires him to cancel his order passed under Section 145 (1). This is the procedure that should have been adopted by the Mag. in this case

7. The learned counsel for the opposite parties contends that when a Mag. cancels his order he has to make some order directing in whose favour the property should be released from attachment & relies upon *Rajdeo Singh v. Emperor* : AIR1948 All425 in Support of this contention.

8. It was held in *Rajdeo Singh v. Emperor* (ubi supra) that where proceedings are dropped under Section 145 (5), Cr. P. C., on the ground that there never existed a dispute likely to cause breach of peace, the Magistrate becomes functus officio & his jurisdiction to act under the section comes to an end & that therefore he cannot enter into evidence to find out which party was in possession; but that if the record disclosed from whose possession property was attached he may restore possession to the party from whose possession it was attached to restore status quo ante. This is not what the learned Magistrate has done in the present case. He has entered into a minute examination of the evidence & without saying that the land was attached from the possession of the opposite parties, has ordered that the opposite parties shall remain in possession until evicted in due course of law. This is not a mere order of release, but an order contemplated by Section 145 of the Code. It is therefore obvious that in this case the Mag. has usurped jurisdiction which he did not possess.

9. For the reasons indicated above, we accepted the recommendation made by the learned Ses. J. & set aside the order of the learned Magistrate directing that the opposite parties should remain in possession till evicted in due course of law. The proceedings shall be dropped & attachment shall be removed.

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