

Brij Behari Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-08-1992

Reported in : 1993CriLJ2536

Judge : J.P. Swmwal, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 125, 133, 138, 145, 145(1), 145(6), 146 and 482

Appeal No. : Misc. Appln. No. 484 of 1982

Appellant : Brij Behari

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : U.S.M. Tripathi, Adv.

Disposition : Application dismissed

Judgement :

ORDER

J.P. Swmwal, J.

1. By means of this application under Section 482, Cr. P.C. the applicant-Brij Behari seeks to quash the order dated 23-3-1980 (though in the certified copy date

mentioned is 28-3-1980), passed by the Joint Magistrate, Basti, and revisional order dated 24-10-1981, passed by the 1st Additional Sessions Judge, Basti, in proceedings under Section 145, Cr. P.C.

2. The facts giving rise to the present application are that on the report of S.O. Walterganj dated 10-7-1979 proceedings under Section 145, Cr. P.C. with regard to plot No. 255 area 0-14-7 of village Baheria commenced. The learned Joint Magistrate Basti passed the preliminary order on 10-7-1979. Both the parties filed written statements and adduced evidence regarding their respective claim with respect to the plot in dispute. The opposite party No. 2 of the present application- Jagdambika Prasad, was first party and the applicant Brij Behari, was the 2nd party in the proceedings under Section 145, Cr. P.C. The first party Jagdambika Prasad in his written statement claimed to have purchased the plot in dispute from one Smt. Israji widow of Lakchmikant through a registered sale deed and to be in possession thereof since then. It is also averred that the 1st party has no connection with the said plot and there was no apprehension of breach of peace from the first party. The Second party Brij Behari in his written statement urged that the sale deed executed in favour of the first party was void and it was executed by an imposter and that the second party was in possession on the basis of succession. It was averred that the mutation proceeding regarding the plot in dispute was pending before the court of Tahsildar concerned and there was no apprehension of breach of peace from the second party. Both the parties prayed in their written statements that the proceedings against them be dropped. Evidence was led by both the parties. The learned Magistrate concerned on the basis of the evidence adduced before him came to the conclusion that the first party Jagdambika Prasad was in possession of the plot in question on the date of initiation of the proceedings and he was entitled to possession over the disputed plot until evicted there from in due course of law. He accordingly made order Under Section 145(6), Cr. P.C. for bidding disturbance of the possession of the first party over the plot in dispute. The second party Brij Behari preferred revision against the order dated 28-3-1980 of the Joint Magistrate, Basti, and the learned First Addl. Sessions Judge by his order dated 24-10-1981, was of the opinion that there was no error in the order passed by the lower court and consequently he dismissed the revision. The Second party has now preferred the present

application under Section 482, Cr. P.C. in this Court.

3. I have heard Shri U.S.M. Tripathi, learned Counsel for the applicant, Shri Jokhan Prasad, learned Counsel for the opposite party No. 2 and Shri M. C. Pant learned A.G.A.

4. The learned A.G.A. raised a preliminary objection that the application under Section 482, Cr. P.C. is not maintainable in view of the Full Bench ruling of this Court in the case of H.K. Rawal v. Nidhi Prakash, reported in 1989 AWC 632: (1990 Cri LJ 961). It has been held by the Full Bench in the aforesaid case (at page 965):

In case of conviction by the Magistrate which are not appealable the order of the Sessions Judge in revision is final and cannot be interfered with by the High Court in revision either at the instance of the same party or suo motu or in the exercise of its inherent powers under Section 482, Cr. P.C. Similarly the order of the Sessions Judge in revision in cases under Sections 125, 133/138, and 145, Cr. P.C. and against an order of discharge by the Magistrate cannot be interfered with by the High Court either in exercise of its revisional powers at the instance of the same party or suo motu or in the exercise of its inherent powers under Section 482, Cr. P.C. for these are also some of the orders of the Sessions Judge which determine the dispute between the parties....

5. The learned Counsel for the applicant cited a Single Bench ruling of this Court in case of Lalla Prasad v. State of U.P. 1991 (28) ACC 139 wherein it has been observed by the learned single Judge that the powers exercised by the Sessions Judge in dealing with a revision may be scrutinised in order to see that there has been any miscarriage or misuse of law for interference, but the merits and demerits of the orders which have been the subject of the revision may not be gone into,

6. The facts of the aforecited case were different. The Magistrate in that case recorded the order of attachment even before the appearance of the other party. There was nothing on record to show whether there was any report of the police. The learned single Judge, however, observed that in the facts and circumstances,

the Magistrate could record an order of attachment only in the event that he had come to one conclusion or the other mentioned in Section 146, Cr. P.C.

7. The facts of the present case are different and there has not been any attachment by the learned Magistrate in the present case; hence the aforesaid ruling does not help the applicant. It is now settled by the aforesaid Full Bench ruling of this Court that the order of the Sessions Judge in the Revision in case under Section 145, Cr. P.C. cannot be interfered with by the High Court. The merits and demerits of the order which has been subject of the revision cannot be gone into. The learned Counsel for the applicant apart from the aforesaid Single Bench ruling could not show any other ruling contrary to aforementioned Full Bench ruling which is binding on this bench. The preliminary objection of the learned A.G.A. is sustained.

8. Though the present petition is not maintainable under Section 482, Cr. P.C. however I deal with the points raised by the learned Counsel for the applicant on merits of the application Under Section 482, Cr. P.C. The learned Counsel has advanced twin arguments; firstly that learned Magistrate should have dropped the proceeding as both the parties had prayed for dropping of the proceeding; and secondly no finding should have been given on title. No doubt these both points are relevant, but if considered in the context of the facts and circumstances of the case, it cannot be said that there has been any miscarriage or abuse of process of court which calls for interference in these proceedings. The applicant has not filed copy of the preliminary order to show that the same was passed without satisfaction of the Magistrate regarding the apprehension of breach of peace. The proceeding had started on the report of the Station Officer, Police Station Walter Ganj. It is the satisfaction of the Magistrate regarding the apprehension of the breach of peace on the basis of which he assumes jurisdiction and this discretion is wide and the Magistrate can come to the conclusion in that regard from any source whatsoever. It is not disputed that the Magistrate passed the preliminary order under Section 145(1) Cr. P.C. on the basis of the report of the police officer. Section 145, Cr. P.C. is intended only to provide speedy remedy for the prevention of the breach of peace arising out of dispute relating to immovable property by maintaining one or other; of the parties in possession. In the present case, as

would appear, both the parties claimed to be in possession on the basis of their title, though on different grounds. It is impossible to lay down any hard and fast rule to satisfy sufficiency of the material upon which the Magistrate ought to be satisfied before he assumed jurisdiction in any particular case. It is entirely with the Magistrate's discretion See AIR 1968 SC 1444: (1969 Cri LJ 13) R.H. Bhutani v. Mani. The discretion used by the Magistrate should not be interfered within any revision except in exceptional cases where the order is either unreasonable or unjustifiable. It was on the basis of the police report that the Magistrate started the proceedings and there is no bar in it. The question whether the Magistrate should have dropped the proceeding when both the parties averred that there was no breach of peace from either side has to be examined with reference to the evidence led by the parties. No doubt in this case, as would appear, no attachment was made which indicates that there was no such exigency of breach of peace between the parties. Sub-section 5 of Section 145, Cr. P.C. provides that nothing in this Section shall preclude any party so required to attend or any other persons interested showing that no such dispute exists or has existed; and in such case, the Magistrate can cancel the order passed Under Section 145(1), Cr. P.C.

9. As already stated, the apprehension of breach of peace is the first condition necessary to give the Magistrate jurisdiction under Section 145, Cr. P.C. and if it is found that there is no longer such apprehension the Magistrate's jurisdiction ceases. He is then bound to cancel the initial order and stay all further proceedings See AIR 1981 SC 18 : (1981 Cri LJ 1276), Rajpati v. Bachchan). If any party or other person interested contests the existence of the dispute, the onus lies on him to show that it does not exist. In the present case, the Magistrate has mentioned in his order that neither party has adduced any evidence which may satisfy the court that there is no threat (apprehension) of breach of peace and that the proceedings are liable to be dropped as consequence thereof. He has further mentioned that both the parties in their written statement affirmed that there was a dispute regarding plot in question. The Magistrate recording satisfaction as to existence of breach of peace cannot drop proceeding unless there is a clear evidence to show that the dispute has ceased to exist See AIR 1981 SC 18 : (1981 Cri LJ 1276) Rajpati v. Bachan.

10. From the perusal of the impugned orders of the courts below, it cannot be said that there has been any miscarriage of the justice even if it is assumed that the Magistrate could have dropped the proceeding when both the constesting parties made prayer for dropping the proceeding. The learned Counsel for the applicant argued that when both the parties were asserting that there was no apprehension of breach of peace though there was dispute regarding title, in such case the Magistrate was not bound to act or continue the proceeding on all that was stated in the police report. It may be noted that the Magistrate should not in mechanical way start the proceedings under Section 145, Cr.P.C. regarding the immovable property which may be the subject-matter of the civil dispute unless there is clear and specific evidence regarding apprehension of breach of peace. Mere ipse-dixit of the police report that there is apprehension of breach of peace is not sufficient and the Magistrate should apply his mind to the concrete facts from which inference of apprehension of breach of peace may reasonably be drawn In the present case, the parties had not adduced any evidence to show that there was no apprehension of breach of peace. There was thus no miscarriage of justice. Regarding the second point, it may be mentioned that the proceedings under Section 145, Cr.P.C. are summarily proceeding and the Magistrate is concerned only with the factum of the possession of disputing parties and not the niceties of the title of the parties which is the domain of the civil court. No doubt, the lower courts have given their findings regarding execution of the registered sale deed by Smt. Israji in favour of the first party and have not accepted the assertion of the second party (applicant) that she was imposter but that by itself will not amount to deciding the title of the parties. The question of title has been considered by the lower courts with regard to the claim of possession of the rival parties and it is only to that extent the said finding is relevant. It is for the civil court or Revenue court to decide the title of the disputing parties which is not the function of the criminal court. Hence the observations regarding title in the impugned orders in no way adversely affect the parties regarding their rights. It is open to them to agitate the matter before the competent court concerned. The operative portion of the order of the Joint Magistrate Basti is self explanatory that the finding is regarding possession of the 1st party over the plot in question and not title. In view of the above discussion, both the contentions of the learned Counsel for the applicant

are devoid of force and there is no merit in the application.

11. No other point was urged or argued.

12. The application under Section 482, Cr.P.C. filed by the applicant is not maintainable and is accordingly dismissed.

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