

Dildar Khan Vs. State of U.P.

Dildar Khan Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/470438

Court : Allahabad

Decided On : Mar-23-1976

Reported in : 1977CriLJ118

Judge : B.N. Katju, J.

Appellant : Dildar Khan

Respondent : State of U.P.

Judgement :

ORDER

B.N. Katju, J.

1. This is an application under Section 482, Cr.P.C.

2. Proceedings under Section 145, Cr.P.C. were initiated against the applicant and opposite party No. 2 in the court of S.D.M., Budaun on the basis of a police report dated 13-11-1973. The preliminary order under Section 145, Cr.P.C. was passed by the learned Magistrate on 31-12-1973 attaching the land in dispute. Evidence was led by both the parties in support of their claim of possession over the land in dispute. The learned Magistrate was unable to decide the question of possession and referred the matter to the civil court for decision under Section 146, Cr.P.C. The learned Munsif, Budaun by his order dated 8-2-1975 held that the opposite party No. 2 was in possession of the disputed land at the relevant time. The

learned S.D.M.. Budaun passed an order dated 14-3-1975 in accordance with the finding of the learned Munsif declaring that the opposite party was in possession of the land in dispute on the date of the preliminary order and two months prior to it and that he was entitled to retain such possession until ousted by due course of law and forbade dispossession. The applicant filed Criminal Revision No. 33 of 1975 against the aforesaid order of S.D.M., Budaun dated 14-3-1975 in the court of Sessions Judge, Budaun which was dismissed by the learned Sessions Judge by his order dated 3-4-75 on the finding that the revision was governed by the Code of Criminal Procedure, 1898 and the finding of the learned Munsif could not be challenged in view of Section 146(1D), Cr.P. C, 1898.

3. The order of the S.D.M., Budaun dated 14-3-1975 was passed after the Code of Criminal Procedure, 1973, came into force on 1-4-1974. The Code of Criminal Procedure, 1898 was repealed by Section 484, Cr.P. C, 1973. It is therefore obvious that the revision against the order of the S.D.M., Budaun dated 14-3-1975 could only be filed under Section 397, Cr.P. C, 1973 and not under the Code of Criminal Procedure, 1898.

4. The question that requires consideration is whether the finding of the learned Munsif dated 8-2-75 given under Section 146(1-B), Cr.P. C, 1898 could be attacked in revision filed under Section 397(1), Cr.P.C. against the order of the learned Magistrate dated 14-3-74 passed in conformity with it under Section 146(1-B), Cr. P, C. 1898.

5. A revision under Section 397, Cr.P.C. 1973 could not be filed directly against the finding of the learned Munsif dated 8-2-75 as it was not inferior criminal court when the learned Magistrate passed the order dated 14-3-75 in conformity with the finding of the learned Munsif dated 8-2-75 the finding of the learned Munsif merged in his order. I am supported in my view by the decision of the Full Bench of this Court in Farzand Ali v. Shaukat Ali : AIR1971 All12 . Under the Code of Criminal Procedure, 1898 the finding of the civil court given under Section 146(1-B), Cr.P. C, 1898 could not be attacked indirectly or collaterally in revision even after it had merged in the final order of the Magistrate under Section 146(1-B), Cr.P. C, 1898 in view of Section 146(1-D). Cr.P.C. 1898 which not only prohibited

the filing of an appeal against the finding of the civil court given under Section 146(1-B) but also did not allow any revision or review of that finding. I am supported in my view by the decision of this Court in Tashuq Husain v. State : AIR1959 All568 . As Section 146(1-D). Cr.P.C., 1898 was repealed by Section 484, Cr.P.C. 1973 on 1-4-74 the finding of the learned Mun-sif dated 8-2-1975 given under Section 146(1-B), Cr.P.C. 1898 could be attacked indirectly and collaterally in revision under Section 397, Cr.P.C. 1973 after it had merged in the final order of the learned Magistrate passed under Section 146(1-B), Cr. P, C. 1898 on 14-3-75. The finding of the Sessions Judge. Budaun that the order of the learned Magistrate dated 14-3-75 passed in conformity with the finding of the civil court dated 8-2-75 under Section 146(1-B), Cr.P.C. 1898 could not be challenged in revision under Section 397, Cr.P.C. 1973 filed by the applicant is, therefore, clearly erroneous.

6. This application is accordingly allowed. The order of the Sessions Judge, Budaun dated 3-4-75 is set aside and the case is remanded to the court of the Sessions Judge, Budaun for decision in accordance with law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com