

Ram AdhIn Vs. Shyama Devi and ors.

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Court : Allahabad

Decided On : Oct-27-1976

Reported in : 1977CriLJ453

Judge : G.D. Srivastava, J.

Appellant : Ram Adhin

Respondent : Shyama Devi and ors.

Judgement :

ORDER

G.D. Srivastava, J.

1. This is an application under Section 482 Cr.P.C. arising out of proceedings under Section 145 Cr.P.C. initiated by Shyama Devi, opposite party No. 1, by means of an application dated 3-6-1975. A report was called for from the Station Officer concerned and after receipt of the report, the preliminary order was drawn up by the Magistrate on 5-8-1975 and the parties were directed to appear on 23-6-1975. On 7-6-75 Shyama Devi moved another application praying that, it being a case of emergency, the property in dispute should be attached and accepting this prayer, the Magistrate attached the property by his order dated 11-6-75. The petitioner challenged the legality of the proceedings pending before the Magistrate on two grounds. Firstly he alleged that there was no likelihood of breach of peace and his second point was that because the court had passed an order of

attachment of the property in dispute under Section 146(1) Cr.P.C. it had no further jurisdiction to inquire into the rights of the parties as to which party was entitled to possession thereof. The Magistrate overruled both these objections by his order dated 18-8-75. He held that a mere denial of apprehension was not sufficient and that in his opinion an apprehension did exist. The second objection was also disposed of by the Magistrate with the observation that his jurisdiction to inquire about possession continued even after the attachment. The petitioner went up in revision against this order and the same was dismissed by the IIIrd Additional Sessions Judge, Allahabad on 24-9-75. By moving this application under Section 482 Cr.P.C. Ram Adhin has challenged the legality of the proceedings under Section 145 Cr.P.C. mainly on the ground that after the attachment under Section 146(1) Cr.P.C. the Magistrate's jurisdiction came to an end. Regarding the existence or non-existence of apprehension of breach of peace, I may point out that the Magistrate, in his aforesaid order, held that, in his opinion, there was an apprehension. It appears that this finding of the Magistrate was not questioned before the learned Additional Sessions Judge, In my opinion also, it is the sole discretion of the Magistrate to decide whether any apprehension exists or not. It is, therefore, not necessary to dilate any further on this aspect of the matter.

2. Coming now to the main point which has been raised in this petition, it may be necessary to reproduce the relevant provision of law, namely, Section 146(1) Cr.P.C. which runs as follow:

(1) If the Magistrate at any time after making the order under Sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof: Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject in dispute.

3. A perusal of this provision of law makes it clear that the Magistrate has been given a power to attach the subject of dispute in three cases:

(1) if he considers the case to be one of emergency, or

(2) if he decides that none of the parties was then in such possession as is referred to in Section 145, or

(3) if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute. After enumerating the three cases, the subsection proceeds to state that the Magistrate may attach the subject of dispute until a competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. The learned Counsel for the petitioner, therefore, argued that if the Magistrate orders attachment of the subject of dispute under any of these three conditions, then all that he can do is to wait until a competent court has determined the rights of the parties. In other words, the argument is that the latter portion of Section 146(1) Cr.P.C. is applicable to all the three conditions which empower the Magistrate to order attachment of the subject of dispute. It is true that a literal interpretation of Section 146(1) leads to such a conclusion.

The normal rule of interpretation, of course, is that the words of a statute should be given their literal and grammatical meaning. But if such a literal interpretation leads to an anomalous and absurd situation and if this literal interpretation leads to a conflict between two provisions of law on the subject, the Court has to find out the real intention of the Legislature. As was pointed by the Supreme Court in *Veluswami Thevar v. G. Raja Nainar* : AIR 1959 SC422 that if two views are possible, one which results in any anomaly and the other not, the duty of the court is to adopt the latter and not the former. Again in another case reported as *R.M.D. Chamarbaug-walla v. Union of India* : [1957]1SCR930 the Supreme Court pointed out that in order to arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider

(1) what was the law before the Act was passed;

(2) what was the mischief or defect for which the law had not provided;

(3) what remedy Parliament has pointed and

(4) the reason of the remedy, The object of the various provisions contained in Chapter X of the Code of Criminal Procedure is maintenance of public order and tranquillity. Section 145 provides for disputes about possession over immovable property. In order to avoid any breach of the peace in connection with disputes over possession of immovable property the Executive Magistrate has been given a power to decide the question of possession without reference to the rights of the parties, so that pending decision of the rights of the parties by a competent court, the contending parties do not disturb the peace. Pending decision by him of the question of possession, the Magistrate has been given a power to attach the property in dispute in order to maintain peace even during pendency of the proceedings in his court. The power to attach the property has been conferred by Section 146(1) Cr.P.C. (new). If a literal interpretation is given to this subsection, it will lead to the conclusion that if the Magistrate attaches the property considering it to be a case of emergency, his jurisdiction will at once come to an end. If the Magistrate is unable to decide which party was in possession or if he decides that none of the parties ' was in possession, he cannot, of course, proceed to decide the question of possession. If the Magistrate attaches the property on account of any of these reasons, his jurisdiction to decide the question of possession obviously terminates and he will only wait for a decision by competent court regarding the rights of the parties. But it should again be noted that the discretion to lift the attachment or continue it will remain with the Magistrate. In other words, the Magistrate alone will have the discretion to decide as to whether the attachment should come to an end or should continue and naturally he will decide this question with reference to the likelihood of any breach of peace. But an anomalous situation would certainly arise if the Magistrate attaches the property not because he is unable to decide the question of possession or because he decides that none of the parties was in possession but because he thinks it to be a case of emergency. A literal interpretation will, therefore, lead to the result that as soon as the Magistrate attaches the property on account of emergency, he will have no jurisdiction to decide the question of possession. This will clearly be

inconsistent with Sub-section

(4) of Section 145, which says that, if possible, the Magistrate shall decide which of the parties was, at the date of the order passed under Sub-section

(1) of Section 145, in possession of the subject of dispute. Sub-section

(4) thus makes it clear that normally and primarily it is the duty of the Magistrate to decide the question of possession. Only in those cases, where he is unable to decide the question of possession or in cases where he decides that none of the parties was in possession, he has to wait for the decision of a competent court. Under the old Code of Criminal Procedure, the Magistrate could refer the matter to the Civil Court for decision. In the new Code of Criminal Procedure, this provision has been dropped but this much is clear that except in cases where the Magistrate is unable to decide or if he decides that none of the parties was in possession, it is the Magistrate who will decide the question of possession. If this is the real intention of the law, Section 146(1) should not be interpreted to mean that if the Magistrate attaches the property on account of emergency, his jurisdiction comes to an end.

4. Sub-section (4) of Section 145 of the Cr.P.C. confers on the Magistrate the power to attach the property if he considers the case to be one of emergency and he also has the right to continue attachment pending his final decision. Even in those cases where the Magistrate referred the matter to the Civil Court under Section 146 of the old Cr.P.C. the final decision had to be given by him on the basis of the findings of the civil court. Pending such final decision, the Magistrate could continue attachment. But in the new Cr.P.C. the provision for reference to the civil court has been dropped and that is why it was deemed necessary that the Magistrate should be given a power to continue attachment even after he has consigned the record awaiting determination of the rights of the parties by a competent court. Section 146(1) is not, of course, happily worded simply because if a literal interpretation is given to this subsection, it may lead to the inference that even in cases of attachment on account of emergency, the Magistrate's jurisdiction ceases. Because under the new Cr.P.C. the power has been given to the Magistrate, to continue attachment even after proceedings have been consigned

and therefore all the contingencies in which the Magistrate can attach the subject of dispute have been given by the Legislature at one place, namely, Section 146(1). The underlying object of Chapter X Cr.P.C. is to maintain peace and tranquillity and it is therefore certainly desirable that the question of possession should be decided by the Magistrate whenever possible and as quickly as possible in order to avoid any breach of the peace. In cases where the property is attached on account of emergency, such attachment is meant to apply only to those cases where the Magistrate is deciding the question of possession himself and pending his decision it is necessary to maintain peace. The attachment in the other two cases is meant to maintain peace; pending decision of the rights of the parties by a competent court. In all these three cases, it is however the Magistrate who will decide whether the attachment at any stage is to be withdrawn or not. It is, therefore, evident that a literal interpretation sought to be put on Section 146(1) will not only lead to an anomalous situation but will also be inconsistent with the main provisions incorporated in Section 145. The Magistrate would refrain from attaching the property even in cases of emergency simply because such an attachment would terminate his jurisdiction. This cannot possibly be the intention of the Legislature. Thus the second point raised in this petition also has no force.

5. In the result the petition is dismissed.