

Majid Vs. Ashok Kumar Gupta

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Court : Allahabad

Decided On : Mar-13-1984

Reported in : 1985CriLJ272

Judge : M. Wahajuddin, J.

Appellant : Majid

Respondent : Ashok Kumar Gupta

Judgement :

ORDER

M. Wahajuddin, J.

1. The applicant has come forward with a prayer that the present proceedings before the Magistrate in Case No. 25 of 1981 may be quashed. As the prayer is not very clear, I may at the very outset lay down the facts as well. The Magistrate passed a preliminary order under Section 145(1), Cr.P.C, recording its satisfaction of apprehension of breach of peace centering round the dispute of possession over immoveable property. Written statements were invited from the parties and the parties filed written statements. After an order passed under Section 145(1) Cr.P.C, the next stage of the proceeding is covered under Section 145(4) Cr.P.C and the Magistrate is bound to conclude the proceedings and declare possession of any of the parties on the authority of the case of Bhutani v. Mani 1969 All WR (HC) 59 : 1969 Cri LJ 13 (SC). It would, however, appear that there is also a

provision in the Cr.P.C contained in Sub-section (5) and in view of the same if the apprehension of breach of peace has ceased to exist the proceeding can be dropped. But this stage will come when evidence is led and the Magistrate hears the case. The practice of hearing any case piecemeal will not be encouraged. Of course, the Magistrate can, after taking evidence under Section 145(4) Cr.P.C, come to a conclusion that the very apprehension of existence of breach of peace no more exists and if he comes to such conclusion on evidence, then he would drop the proceedings without giving any finding under Section 145(4) Cr.P.C, declaring any party to be in possession. It is so, because the very foundation of the jurisdiction of the Magistrate is that there should be subsisting apprehension of breach of peace. This principle was also recognized in one of the later pronouncement of the Supreme Court holding that if such a plea is raised subsequently, the Magistrate has to adjudicate upon it also when it reflects upon the jurisdiction itself. It, however, does not mean that the Magistrate can just whimsically and in an arbitrary manner go to hold that no apprehension of breach of peace exists and he is going to drop the proceedings. Once parties have put in appearance in response to notice under Section 145(1), Cr.P.C., raising their respective pleas, the pleas are to be heard and adjudicated upon on the strength of evidence, which is led before the Magistrate, and not whimsically. I may observe that the cases of Gajpat Rao v. Ladli Kunwar 1981 All WC 505 : 1981 All LJ 831 and Mathuralal v. Bhanwarlal : 1980 CriLJ1 do not lay down any different proposition of law. Rather the case of Rajpati v. Bachan : 1980 CriLJ1276 is a direct authority on the point. It lays down that once a satisfaction is recorded in the preliminary order it is not necessary that the breach of peace should continue at every stage of proceedings, unless there is a clear evidence to show that the dispute has ceased to exist so as to bring the case within the ambit of Sub-section (5) of Section 145 Cr.P.C. It has, however, been held in that case that unless such a contingency arises, the proceedings have to be carried to their logical end.

2. The Magistrate in this case has proceeded in a very peculiar manner. An application was preferred by the present applicant while filing a written statement that there is no more apprehension of breach of peace and the proceeding be dropped. The prayer was objected to. What the Magistrate did was to call for the police report and then acting upon it he dropped the proceedings. This the

Magistrate could not do. Evidence should have been invited. Ordinarily, the proceedings should have continued. The resort to the procedure under Section 145(4) should have been made and unless on the face of the evidence, so adduced, the Magistrate came to a clear finding and conclusion on the basis of evidence that the apprehension of peace ceased to exist, he had to continue the proceedings to its logical end. The matter also should not have been proceeded piecemeal, though he could well first record a finding that apprehension of peace has ceased to exist as to then not to proceed further concerning the finding of possession in the judgment. In these circumstances, the order of the Magistrate dropping the proceeding, which has been set aside by the revisional court, happened to be per se bad and has been rightly set aside. The order of remand is also fully justified and cannot be interfered with. This petition is, therefore, dismissed, but while proceeding with the matter, the Magistrate shall bear in mind the proposition laid down in the case of Rajpati (1980 Cri LJ 1276) (SC) (Supra) and the observations of this Court.

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