

Mukhram and anr. Vs. State Through Sumra

Mukhram and anr. Vs. State Through Sumra

SooperKanoon Citation : sooperkanoon.com/473848

Court : Allahabad

Decided On : Sep-24-1951

Reported in : AIR1953All618

Judge : Agarwala, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145 and 439

Appeal No. : Criminal Ref. No. 392 of 1950

Appellant : Mukhram and anr.

Respondent : State Through Sumra

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : G. Kumar, Adv.

Disposition : Reference rejected

Judgement :

ORDER

Agarwala, J.

1. This is a reference arising out of the proceedings under Section 145, Criminal P. C. Sumra complainant made an application under Section 145, Criminal P. C. alleging that he had cultivated the plot and grown sugarcane therein; that

Mukhram and others (who will be called applicants hereafter) had forcibly cut away the crop and removed it in carts to sugar mill; that there was a danger of a breach of the peace and that the sugarcane be attached and made over to him. A copy of the application was sent to the Station Officer of the Police station concerned who reported that there was an apprehension of a breach of the peace. On receipt of this report the learned Magistrate ordered the police to attach the property and put it to auction and deposit the money recovered in auction in Court. At the same time he ordered notices to be issued to both the parties to produce evidence in proof of their respective possession on 19-12-1949. The order passed by the learned Magistrate was no doubt not strictly in accordance with the provisions of Section 145(1), Criminal P. C. The applicants filed a written statement denying Sumra's possession and alleging that they had been in possession of the plot and had sown, the crop. Both parties gave evidence as to the factum of possession and the learned Magistrate, after considering the evidence, came to the conclusion that Sumra was in possession on the material date. He, therefore, ordered that the land, in suit should remain in possession of Sumra till the applicants ejected him in due process of law. Although he made no reference to the existence of a danger of a breach of the peace in his preliminary order, he, in the final order passed by him, held that there was such danger. The applicants went up in revision to the learned Sessions Judge who after a careful review of the entire evidence on the record came to the conclusion that if the evidence is properly considered the conclusion should have been that the applicants and not Sumra were, in fact, in possession of the plot and Had sown the crop. He, therefore, made this reference recommending that the order of the Magistrate be set aside and the property be put in possession pf the applicants and the money recovered in auction be also paid to them.

2. I have heard the learned counsel for the parties and have come to the conclusion that no Interference with the order of the Magistrate is called for. The learned counsel appearing for the applicants is unable to say that there was no evidence on the record in support of the conclusion arrived at by the Magistrate. All that he says i3 that if the evidence were properly considered the only conclusion that could be arrived at was that the applicants were in possession. The learned Sessions Judge has pointed out certain circumstances which in his

opinion should have led the Magistrate to draw a different conclusion from the one he actually drew. It is quite possible that if I were sitting as a Court of Appeal I might have come to the same conclusion at which the learned Sessions Judge arrived; but I think in the exercise of revisional jurisdiction this is not a proper thing to do. In cases under Section 145, Criminal P. C. a criminal Court does not finally decide the rights of the parties. It merely passes an order with the object of preventing the breach of the peace leaving one of the parties to have a declaration made from the proper Court as to his rights. Great weight should be attached to the opinion of the learned Magistrate who is answerable for the maintenance of peace in his jurisdiction as to whether there is a danger of a breach of the peace or not. If he is so satisfied his order should be interfered with only upon very strong grounds. Where there was evidence in support of the conclusion arrived at by the learned Magistrate his conclusions of fact should not be disturbed.

3. I see no reason to interfere. I reject this reference.

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