

Ramji Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-25-1972

Reported in : 1972CriLJ1542

Judge : C.D. Parekh, J.

Appellant : Ramji Singh and ors.

Respondent : State of U.P. and ors.

Judgement :

ORDER

C.D. Parekh, J.

1. This revision arises out of the order dated 16th May. 1969, passed in Criminal Case No. 30 of 1969 under Sub-section (1-B) of Section 146. Criminal Procedure Code. The applicants preferred revision against the order aforesaid before the Sessions Judge and the II Additional Sessions Judge. Ballia, by his order dated 10-10-1969 dismissed the revision application and did not refer the matter to this Court. Aggrieved by the orders aforesaid the applicants have preferred this revision.

2. The facts of the case may briefly be stated thus: Proceedings under Section 141. Criminal Procedure Code were initiated by the Sub-Divisional Magistrate. Ballia. on the basis of a report, made by the Station Officer, P. S. Kotwali. Ballia; to

the effect that a dispute likely to create breach of peace existed concerning three pieces of land described in detail in the report between the parties, The S. D. M. being satisfied about the existence of breach of peace in respect of the immovable property issued an order under Sub-clause (1) of Section 145. Criminal Procedure Code on 13th of December, 1966 and also attached the disputed plots. The S. D. M. called upon the parties to file their respective written statements putting forth their claim and to adduce evidence in support thereof. The parties filed their respective written statements and Ramji Singh filed written statement on his behalf as well as on behalf of other applicants on 17th of March, 1967. In paragraph 2 of the written statements he has stated that there was no apprehension of breach of peace between the parties. The S. D. M. as it appears did not advert to the plea taken in the written statement. He, however, after looking to the evidence adduced by the parties was unable to make up his mind as to which of the parties was in possession on the date of the preliminary order and within two months prior to it. He, therefore, referred the matter under Sub-clause (1) of Section 146, Criminal Procedure Code to civil Court to decide as to which of the parties was in possession of the subject-matter of dispute and continued the attachment of the property. The case was referred to the civil Court by order dated 29-1-1968. The Munsif returned the finding to the Magistrate on 7-5-1969 and find order in the case, on the basis of the finding recorded by the civil Court was passed on 16-5-1969 and this order of the magistrate has been challenged in this revision,

3. Learned counsel for the applicants submitted that the magistrate was bound to decide the question as to whether there was or was not any apprehension of breach of peace existing between the parties and when a plea was taken in the written statement by the applicant the Magistrate was required first to decide the question and thereafter if he was satisfied that there was still apprehension of breach of peace he could refer the matter to the Civil Court. Learned counsel contended that the order referring the matter to the civil Court and the subsequent proceedings are illegal as according to the learned Counsel the magistrate had no jurisdiction to decide the matter any further. Learned counsel referred to a case reported in 1969 All WR (HC) 817 (DB) (Sheo Nath Singh v. Munno Singh Yadav). He has also placed reliance on an unreported case Criminal Misc. Case No. 552 of 1970 (All) decided by a single Judge of this Court wherein the Division Bench

case of Sheo Nath Singh has been relied upon. The argument advanced, therefore, by the learned Counsel is that neither the Magistrate had any jurisdiction to pass any order under Sub-section (1) of Section 146. Criminal Procedure Code nor the Munsif could decide the matter referred to him on the basis of the order passed by the Magistrate without jurisdiction. I have given my thoughtful consideration to the law laid down in the Division Bench case and also decided by the learned Single Judge and to the submissions made by the learned counsel. In my opinion the ruling referred to and decided by the Division Bench and the case decided by the Learned Single Judge do not help the applicant nor the contentions raised have any force.

4. The case of Sheo Nath Singh, 1969 All WR (HC) 817 (supra) was a case under Section 145. Criminal P.C. and upon the plea being taken by the parties to that litigation and the evidence adduced in support of the contention that there was no existence of breach of peace between the parties the Division Bench has held that the Magistrate under Sub-clause (5) of Section 145, Criminal Procedure Code must decide this question. The Division Bench has held that the raising of this question really amounts to the raising of a jurisdictional question and, therefore, duty is cast upon the Magistrate to decide the question raised before him. But in my opinion in a case where the plea is taken but no evidence is adduced in support of the plea or even if the evidence is adduced but the plea is not pressed before the Magistrate the Magistrate is not bound to decide the question. In the instant case it has not been shown to me that the applicants adduced any evidence in support of the plea taken in the written statement and from the conduct of the applicants as it appears the plea on the basis of the evidence if any was given up by the applicants and, therefore, in every case the Magistrate is not bound to record a finding as required under Sub-clause (5) of Section 145. Criminal Procedure Code. Sub-clause (5) of Section 145. Criminal Procedure Code puts a check on the continuation of the proceeding but does not take away the jurisdiction of the Magistrate which is vested in him and which he exercises under Sub-clause (1) of Section 145, Criminal Procedure Code. If the Magistrate before the passing of the order under Section 145. Criminal Procedure Code had omitted to pass any order under Sub-clause (5) of Section 145, Cr. 'P. Code the parties could proceed under the proviso to Sub-section (1) of Section 146,

Criminal P.C. and apply to the Magistrate once again that there was no longer any likelihood of breach of peace in regard to the subject-matter of dispute and he should withdraw the attachment and the Magistrate, if he is satisfied would do so but in the instant case the applicants did not move the Magistrate under the proviso to Section 146 (1). Cri. P.C. and awaited the result of the finding of Civil Court. The finding was recorded by the civil Court under Section 146 (1-B). Criminal P.C. and when once the finding in the proceedings was submitted to the Magistrate the Magistrate was bound to proceed to dispose the proceedings under Section 145, Criminal Procedure Code in conformity with the decision of the Civil Court and he could not have thereafter adverted to Section 145 (5). Criminal P.C.

The applicants in the instant, case did not even apply to the Magistrate once again after the receipt of the finding of the civil Court that there was no apprehension of breach of Peace between the parties and he could drop the proceedings under Section 145 (5), Criminal P.C. From the conduct of the applicants as it appears it could well be inferred that although a plea was taken by the applicants in the written statement but they did neither seriously press the plea before the Magistrate nor took any steps thereafter and awaited the result of the finding and the order of the Magistrate. In my opinion, therefore, they cannot be allowed to raise such a plea of jurisdiction. There was no lack of jurisdiction in the Magistrate and as I have already expressed my opinion earlier that Sub-clause (5) of Section 145. Criminal Procedure Code only puts a brake on the jurisdiction that is being exercised by the Magistrate under Sub-clause (1) of Section 145. It does not take away the jurisdiction which he has once exercised and if under Section 145 (5) the Magistrate comes to a finding at a later stage that there is no apprehension of breach of peace he may drop the proceedings, In my opinion the proceedings of the Magistrate are not vitiated and the Division Bench case does not help the applicants,

5. The Single Judge decision of this Court in Criminal Miscellaneous Case No. 552 of 1970 (All) referred to above and relied upon by the learned Counsel was a case under Section 561-A, Criminal Procedure Code for quashing of the order. The learned Single Judge exercised his jurisdiction under Section 561-A, Criminal Procedure Code and not under Section 435. Criminal P.C. as I am required to do.

The single Judge decision has interpreted the Division Bench case in the manner that before the passing of the final order the Magistrate should have given a finding as to whether there was apprehension of breach of peace or not but the facts of the present case where the plea does not appear to have been seriously pressed and by their own acts the applicants appear to have given up the plea, if not expressly by necessary implication, they cannot be allowed to take up the matter at this stage and the single judge decision also does not help them. The detailed reasons have not been given in that case and, therefore, it is not possible for me to hold whether there were laches on the part of the applicants in that case or not as they are in the present case.

6. No other case has been referred to me.

7. While deciding criminal reference No. 85 of 1971 (All) I have myself expressed the opinion which I still hold. The reference was decided on 2-11-1971, and I have been of the view that if the Magistrate after the finding of the Civil Court has been received by him, decides the question of apprehension of breach of peace as provided under Section 145 (5), Criminal Procedure Code he is likely to negative the finding against which no appeal, review or revision has been provided by the Code itself, I am still of the opinion that when the right of appeal, review or revision has been taken away against the finding of the Civil Court given on a reference the Magistrate is bound to dispose of the proceedings under Section 145, Criminal Procedure Code in conformity with the decision of the Civil Court. The law impliedly puts a check on the exercise of the powers of the Magistrate under Sub-clause (5) of Section 145. Criminal Procedure Code after the receipt of the finding by the Civil Court, of course before the finding is received the Magistrate may if he so likes under the proviso to Section 145 (1). Criminal Procedure Code give a finding that there is no apprehension of breach of Peace and he may pass orders accordingly.

8. No other point has been pressed before me.

9. In my opinion the revision must fail. The revision is accordingly dismissed. Stay order dated 6-1-1970 passed by this Court is vacated.

