

Fateh Mohammad Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/474533

Court : Allahabad

Decided On : Nov-19-1981

Reported in : 1982CriLJ388

Judge : M. Wahajuddin, J.

Appellant : Fateh Mohammad

Respondent : State of U.P. and ors.

Judgement :

ORDER

M. Wahajuddin, J.

1. The applicant has moved this application Under Section 482, Cr. P. C, praying that the order of attachment dated 6-9-1979 passed by the then City Magistrate, Gorakhpur, in Case No. 61 of 1979 be quashed.

2. It. would appear that a civil litigation is also pending in the Court of Civil Judge, I, Gorakhpur, namely, Original Suit No. 138 of 1979, vide its order dated 24-9-1979 (Annexure '3' to the application), the Civil Judge directed that the parties are restrained from dispossessing defendant No. 5, i.e., Fateh Mohammad, from the disputed property otherwise than in due course of law. It was further observed that the possession of the defendant No. 5 cannot be disturbed with the help of criminal court's findings or direction passed in proceedings Under Section 145, Cr.

P. C-, which is at present pending.

3. Reliance was placed upon a single Judge decision in *Bipta v. Dwarka* 1961 All LJ 873. In that case there was a recent decree of the civil court declaring one party to be in possession and it was held that the matter cannot be re-agitated Under Section 145, Cr. P. C. There its, however, a latter Division Bench pronouncement in *Kalap Din v. State* 1970 All LJ 873. In this later pronouncement, the entire case law on the point has been considered. It has been held that the decision of civil court does not oust the jurisdiction of the Magistrate Under Section 145, Cr. P. C., nor such decision is binding upon him. It has also been held that once a proceeding Under Section 145, Cr. P. C., has been initiated and preliminary order has been passed, such proceedings cannot be dropped and has to continue. It would appear that earlier conflicting views were expressed by the pronouncement of the Hon'ble single Judge and in that background a Division Bench was constituted and the matter was referred to the Division Bench. In earlier Division Bench case *Hosnaki v. State* AIR 1056 All 81: 1956 Cri LJ 168 has also been referred in the aforesaid pronouncement laying down that the Magistrate is not concerned '... whether a dispute has been decided recently by a court of competent jurisdiction'. The sole criteria is whether any apprehension of breach of peace exist and if the Magistrate is satisfied on the point and the dispute centred round any property, he has to proceed Under Section 145, Cr. P. C. without referring to the other rulings, which have been considered, I may quote the following observations in the Division Bench (supra):-

26. We have, therefore, no hesitation in concluding that if a Magistrate is satisfied that a dispute in relation to immovable property giving rise to an apprehension of breach of peace exists between the parties, he should initiate proceedings Under Section 145, Cr. P. C., and that the existence of any decision of a civil or revenue court in favour of any of the disputants cannot bar the initiation of proceedings Under Section 145, Cr. P. C.' In this Division Bench it has also been observed that if the judgment of civil or revenue court is produced before the Magistrate, it should be considered by him only as evidence in the case and neither such decision bars the jurisdiction of the Magistrate nor it is binding upon the Magistrate, and the Magistrate has to come to its own findings as to which of the

parties were in possession on the material date.

4. It is noteworthy that the Magistrate passed the order of attachment on 16-9-1979 (Annexure '5' to the application). An order from the civil court was obtained much later. The civil court could not interfere with the jurisdiction of the criminal court as to give any direction? concerning any proceedings Under Section 145 Cr. P. C. In fact, such a direction given by the civil court would be contrary to the law laid down in the case of Kalap Din 1970 All LJ 873 (supra). The Magistrate is also not bound by such direction-at all, which should not have been given by the civil court.

5. I have gone through the attachment order of the Magistrate. He has neither committed any irregularity nor illegality. The civil court's injunction order even did not exist up to that date. When that is the position, the hands of the Magistrate in proceedings Under Section 145, Cr.PC were not tied on account of any subsequent orders passed by the civil court; and as the primary object is to prevent the apprehension of breach of peace, the Magistrate is fully competent and has also the jurisdiction to give effect to his order of attachment, which is of earlier date. It would, however, be open to the Magistrate to consider the provisions of Section 146(1), Cr. P. C. There are alternative ways in which the Magistrate can act after attachment and one of the alternatives is that the Magistrate may after attachment simply direct that the attachment will continue until the dispute is determined by a competent court. By this observation I do not mean that this is the only course open to the Magistrate. The Magistrate has to exercise his own discretion as to which of the courses he should adopt.

6. The application Under Section 482, Cr. P. C, is hereby rejected.