

Ram Charan Vs. Bakhtawar Singh

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Court : Madhya Pradesh

Decided On : Jul-22-1952

Reported in : 1953CriLJ641

Judge : Dixit, J.

Appellant : Ram Charan

Respondent : Bakhtawar Singh

Judgement :

ORDER

Dixit, J.

1. This revision petition arises out of proceedings under Section 145, Criminal P.C. instituted in the Court of Mr. Bhargava, Second Class Magistrate Shajapur, on a complaint dated 24.7.51 of the non-applicant Bakhtawar Singh. The learned Magistrate after coming to the conclusion that a dispute likely to cause the breach of the peace existed and there was a likelihood of the breach of peace, passed an order attaching the disputed property, pending his decision under Section 145. The learned Magistrate also directed the applicant who was in possession of the property at the time of the presentation of the application to hand over the possession of the property to the non-applicant pending the final decision in the case. The applicant objected to the disturbance of his possession and also raised the objection that Mr. Bhargava being a Magistrate of the Second Class was not

competent to entertain the application under Section 145, Criminal P.C. The learned Magistrate overruled both these objections. The applicant then approached the Sessions Judge of Shajapur for a revision of the order of the Magistrate. The learned Sessions Judge rejected the revision petition. The applicant has now preferred this revision petition against the decisions of the Courts below.

2. Mr. Abdul Hafiz, the counsel for the applicant pressed before me both the objections raised by the applicant in the lower Court. In my opinion, the objections must be upheld, and this petition must be accepted.

3. As regards the disturbance of the applicant's possession pending the final disposal of the application under Section 145, Criminal P.C. it is clear that the learned Magistrate was in error. Under Section 145, the Magistrate has no jurisdiction to pass any temporary order other than an order of attachment of the property in urgent cases pending inquiry into the question of possession. He has thus no power to order the party who was in possession at the time of the application to hand over the possession of the property to the non-applicant pending the final decision in the proceedings. The Magistrate can, no doubt, in execution of the order of attachment take possession of the property and manage it during the pendency of the proceedings and for this purpose it is open to him to appoint some person to manage the property subject to his control and supervision. Apart from the fact that it is highly undesirable for a Magistrate to appoint a party to the dispute to manage the property on his behalf, it does not appear from the record in the present case that the learned Magistrate in directing the applicant to hand over the possession of the property to the non-applicant intended to appoint the non-applicant as a person to manage the property on his behalf and subject to his control and supervision. That being so, the direction of the Magistrate disturbing the possession of the applicant pending the final decision in the proceedings cannot be maintained. Mr. Mungre the learned Government Advocate for the State frankly and rightly conceded that he could not support this direction of the Magistrate.

4. The objection that Mr. Bhargava being a Second Class Magistrate was not competent to entertain the application under Section 145, Criminal P.C. is a so well founded. Learned Counsel for the applicant says that there is no notification or order of the Government appointing Mr. Bhargava as a Sub-Divisional Magistrate. The learned Government Advocate on the other hand relies on notification No. 258 of the Law Department published at page 0 of the Gazette dated 2.4.49 to show that Mr. Bhargava was a Sub-Divisional Magistrate. Mr. Bhargava admits that there is no other notification or order of the Government with regard to the appointment of Mr. Bhargava as Sub-Divisional Magistrate. In my opinion, the notification relied on by the learned Government Advocate does not in anyway help him. This notification was only with regard to the posting at various places of the Second Class Magistrate mentioned in the notification. The notification nowhere petitions that these Second Class Magistrates would be in the charge of sub-divisions at the places of their posting, it is also worthy of note that in the notification the place of posting is stated to be 'the Court' of a particular place. Under Section 13, Criminal P.C. a Sub-Divisional Magistrate is a Magistrate of the First or Second Class who has been placed in charge of a sub-division by an order of the Government. No such order of the Government appointing Mr. Bhargava, Second Class Magistrate, as a Sub-Divisional Magistrate is before me and none is stated to exist. Mr. Mungre relied also on an order of this Court-passed some time in December 1950 with regard to the transfer of Mr. Bhargava from Bamori to Shajapur as Munsif Magistrate, I do not see how this order shows that Mr. Bhargava was a Sub-Divisional Magistrate at Shajapur. The order of the High Court transferring Mr. Bhargava from Bamori to Shajapur is not an order of the Government placing Mr. Bhargava in charge of a sub-division. There is also nothing in the order to show that Mr. Bhargava was a Sub-Divisional Magistrate at Bamori and was transferred to Shajapur in that capacity. In my opinion, Mr. Bhargava had, therefore, no jurisdiction to entertain the application under Section 145, Criminal P.C.

5. For the above reasons, I hold that the proceedings conducted in this case by Mr. Bhargava were without jurisdiction. The proceedings are, therefore, quashed. The possession of the property must be restored to the applicant who was in possession at the date of the application filed by the non-applicant before Mr.

Bhargava. The petition is accordingly accepted.

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