

Ratan Singh Vs. Raghubir Singh

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Court : Madhya Pradesh

Decided On : Apr-17-1952

Reported in : 1952CriLJ1449

Judge : Chaturvedi, J.

Appellant : Ratan Singh

Respondent : Raghubir Singh

Advocate for Pet/Ap. : Mr. Sanghi

Judgement :

ORDER

Chaturvedi, J.

1. This revision application arises out of proceedings under Section 145, Criminal P.C. The short facts of the case are that one Raghubir Singh who is the non-applicant in this case made an application to the Court of Sub-Divisional Magistrate, First Class, Neemuch, against the-petitioner Ratan Singh alleging that a plot of land behind his house No. 962 in Neemuch city was in-his possession but he had been dispossessed by the petitioner Batan Singh on 9.7.1950. This dispossession was caused by storing some stones and bricks near the back-door of the said house No. 962 and it was alleged that there was likelihood of breach of peace. The Magistrate after the examination of complainant passed a preliminary

order holding, that a dispute existed which might cause breach-of peace. After recording the evidence adduced by the parties, the learned Magistrate came to the conclusion that the complainant had been in possession of the piece of land in dispute and was wrongly-dispossessed by the petitioner.

2. He, therefore, declared under Sub-clause (6) of Section 145 that the complainant was entitled to possession of the disputed land until he was evicted therefrom in due course of law. He also passed an order forbidding all disturbance of such possession until such eviction and directed that the possession of the complainant be restored to him.

3. The petitioner went in revision against this order to the Court of Additional District Magistrate. But his revision was dismissed. He now comes to this Court and asks me to revise the orders of the Courts below.

4. The question whether Raghubir Singh was in possession of the piece of land in dispute or whether Ratan Singh was in possession of it, on 9th July 1950, is a question of fact and a Court of revision cannot disturb findings of fact. In this view of the matter, there is not much substance in this application and I should have straightway dismissed this revision petition. Mr. Sanghi, learned Counsel for the petitioner, however, brings to my notice certain irregularities which, according to him, go to the root of the case, and on the basis of these irregularities Mr. Sanghi contends that the orders of the Courts below should be set aside.

5. The first irregularity according to the learned Counsel is in the preliminary order passed in the case and Mr. Sanghi contends that it was, bad in law as the property in dispute was not therein properly specified and described. Reliance is placed on 'In re petition of T.A. Martin' 27 ALL. 296. The preliminary order passed in that case by the Magistrate gave no information as to the subject of the dispute and it left the persons to whom the notice was ordered to be issued quite in the dark as to the property in regard to which they had to set forth their respective claims. The Allahabad High Court (Banerji J.) in that case held that inadequacy of such order gave the High Court jurisdiction to interfere and the order of the Magistrate was set aside. In another case Shiv Narain v. Satish Chandra 24 Cal. W.N. 621 : 21 Cr.L.J. 693 : 57 Ind. Gas, 161, a Division Bench of the Calcutta High Court observed that

in drawing up the preliminary order in a proceeding, under Section 145 the subject-matter of the dispute should be clearly specified and an omission to do so amounts to a serious defect.

In this case, the dispute related to 300 bighas of land but it was not certain whether this land was in Mouza Jatrasindhe or in Rafaitpore. The Magistrate in his preliminary order had referred only to '300 bighas of land in Mouza Jatrasindhe' and under these circumstances, the observations of the Calcutta High Court were quite justifiable. The facts of that case however do not apply to the present case. Here, the only dispute related to a piece of land behind the complainant's house and the present petitioner Ratan Singh to whom notice was issued knew very well the subject-matter of the dispute and was not left in the dark as to the property in regard to which he was to set forth his claim. In my opinion, where the accused knew very well the subject-matter of the dispute an omission to clearly specify it in the preliminary order is only a minor defect of procedure and can be ignored.

6. The next irregularity pointed out by Mr. Sanghi is that a notice was not issued to Chaturibai who was interested as a claimant to the property in dispute. According to Mr. Sanghi, she ought to have been added as a party to the proceedings and a notice ought to have been issued to her under Sub-clause (1) of Section 145, Criminal P.C. which lays down that the magistrate, if satisfied that a dispute likely to cause a breach of peace exists concerning any land etc., within the local limits of his jurisdiction, shall make an order in writing and require the persons concerned in such dispute to attend his Court in person or by pleader. The question is what is the meaning of the parties concerned in such dispute? The whole Section 145 may be referred to in this connection. It may be noted that Sub-section 3 requires the publication of the order at or near the subject of dispute; which is intended to serve as a general notice to all persons interested; Sub-section 5 then allows any person interested, other than the parties expressly required to attend, to intervene and show that there is no real dispute existing; and Sub-section 7 evidently contemplates the substitution of legal representatives of deceased parties.

It appears to me on a consideration of these sub-sections and of the language used therein that the words 'the parties concerned in such dispute' must have been intended to extend to persons other than the actual disputants; and Chaturibai could have been made a party to the proceedings; but considering that she is the mother-in-law of the petitioner Ratan Singh and was represented by the petitioner, as her Mukhtyaram, failure to add Chaturibai as a party to the proceedings under Section 145 is not a serious matter when she was not concerned in the dispute likely to cause breach of peace and, in my opinion, it cannot be a ground for interference by this Court. I am fortified in this view by *Bisram v. Kamta Prasad* A.I.R. 1945 Oudh 62 and *Mukhal Singh v. Ram-saroop Singh* A.I.R. 1917 Pat. 435. Apart from other considerations, I respectfully concur in the following observations of Hill J. in the Five Judges Pull Bench decision in *Krishna Kamini v. Abdul Jubbar* 30 Cal. 155:

A Magistrate would no doubt be acting without jurisdiction, if he entered upon his inquiry without having issued the orders contemplated by Clause 1 of the section. But questions of whether 4 ought to have been added as being a person likely to be affected by the proceeding, or B omitted as not being concerned in it, or whether was aided at too late a stage, and such like, are questions of procedure by which the jurisdiction of the Magistrate is not affected.

7. Mr. Sanghi then invites my attention to the wording of Section 145, Criminal P.C, which after providing in Clause (1) how the initial order is to be drawn up and what it is to contain, lays down, in Clause (3) that a copy of the order shall be served upon such person or persons as the Magistrate may direct, and that at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute. This is followed by Clause (4), which lays down that the Magistrate shall then enquire into the question of possession of the subject-matter of the dispute, Mr. Sanghi contends that the words 'at least one copy shall be published' impose a duty on the Court and must be taken to be mandatory. He relies upon p. 878 para. 3 of *Maxwell on Interpretation of Statutes* (194S edition). He is of opinion that the publication of the notice on the land in dispute under Clause 3 is a condition precedent to the holding of an inquiry under Clause 4 and that such non-publication of the order takes away the jurisdiction of the Court.

There is no doubt there are certain observations in Chanan Singh v. Emperor A.I.R. 1938 Lab. 345 which lend some support to the contention of Mr. Sanghi but I am disposed to agree with the views of Chevis J. in Nur Bahsh v. Emperor A.I.R. 1917 Lah. 35 (1) that the omission to serve a copy of the order on the parties as required by Section 143 Sub-clause 3 does not necessarily invalidate proceedings if no prejudice has been caused to the accused by it. The same view had been held in Sukhlal Sheikh v. Tara Chand 33 Cal. 68 where a Full Bench of five Judges came to the conclusion that the provisions as to the publication of the copy of the order in Section 143(3) relate to a matter of procedure only and not of jurisdiction; and that if Clause (1) of Section 145 has been complied with the Magistrate has jurisdiction to deal with the case and the mere fact that he omitted to have a copy of such order published by affixing it to some conspicuous place at or near the subject of dispute does not deprive him of jurisdiction but is only an irregularity in his procedure.

Ghose J. who expressed the minority opinion held the view that the Magistrate acquires jurisdiction when the conditions of Clause (1) have been fulfilled; Clauses 3 and 4 lay down the procedure by which the jurisdiction is to be exercised, but the procedure prescribed is mandatory and not simply directory. When a Magistrate fails to comply with Clause 3 he does not act without jurisdiction, but illegally in the exercise of his jurisdiction and the High Court has the power to interfere. But, such non-compliance is not an illegality unless some prejudice to any party has been thereby occasioned.

8. I agree with Mr. Sanghi that Sub-clause (a) of Section 145, lays down a mandatory provision but I am f also of the opinion that the breach of a mandatory provision of the Criminal Procedure Code does not vitiate the whole trial or proceedings. In Abdul Bahaman v. Emperor 54 Ind. App. 96 : 5 Bang. 53 : A.I.R. 1927 P.C. 44 a mandatory provision of the Code i.e., provision of Section 860 had been broken. But their Lordships held that it was merely an irregularity which was curable under Section 537 of the Code, as no failure of justice had been occasioned and the accused had not been in any way prejudiced.

Their Lordships distinguished that case from the case of *Subrahmania Ayyar v. Emperor* 25 Mad. 61 : 28 Ind. App. 257 (P.C.) where the trial of a man, on charges of extortion in which forty-one criminal acts extending over a period of two years were brought against him in contravention of a section of the Code which provides that a man can only be tried for three offences and these committed within a period of twelve months, was held bad and the conviction was quashed because the provision of Section 387 did not cure it. Their Lordships pointed out that the procedure adopted in *Subrahmania Ayyer's* case, was one which the Code had positively prohibited, and that it was possible that it might have worked actual injustice to the accused.

9. It has been pointed out in several cases (e.g. *Kapurchand v. Suraj Prasad* 55 ALL 301 F.B. at p. 312 that although in *Subrahmania's* case, which was decided in 1901, their Lordships of the Privy Council drew this distinction between an 'illegality' and 'irregularity' in the latter case *Abdul Bahaman v. Emperor* A.I.R. 1927 P.C. 44, no such distinction was referred to and the Legislature thereafter did not introduce the word 'illegality' in Section 537 or anywhere else in the Code although the section was amended after 1901. In *Kottaya v. Emperor* A.I.R. 1947 P.C. 67 the Judicial Committee held that when a trial is conducted in a manner different from the one prescribed by the Code as in *Subrahmania & case*, 28 Ind. App. 237, the trial is bad, and no question of curing an irregularity arises, but, if the trial is conducted substantially in a manner prescribed by the Code, but some irregularity occurs in the course of such conduct the irregularity can be cured under Section 537, and nonetheless so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code.

Their Lordships further observed in this case that the distinction drawn in many cases of India between an 'illegality' and an 'irregularity' is one of degree rather than of kind. In this case their Lordships held the trial to be valid notwithstanding the breach of a mandatory provision in Section 162.

10. From a perusal of the three decisions of their Lordships of the Judicial Committee referred to above it is quite clear that if a trial is conducted in a manner

expressly prohibited by the Code then alone the trial will be vitiated and Section 537 will not cure it. In construing Sub-clause 3 of Section 145 we have, however, to bear in mind the purpose with which this section was enacted. Its object is clearly to bring to an end by a summary process disputes relating to land, etc., which are in their nature likely to end in breaches of the peace. Considering the main object with which the section was enacted the only procedure expressly prohibited by the Code is when the Magistrate initiates proceedings under Section 143 without coming to a conclusion whether a dispute concerning the land in question exists which is likely to result in a breach of the peace.

It therefore seems to be improper to lean too much in attempting to construe the section upon analogies derived from suits and other civil proceedings, the results of which are very different from those of proceedings under Section 143. Clause 8 provides for the publication of a copy of the order in a conspicuous place at or near the subject-matter of dispute, probably with the intention of guarding against collusive proceedings, as well as to give to any one interested, who may through an oversight or otherwise not have received a summons, an opportunity of coming with his claim, and also to notify generally to all persons in the locality that a proceeding under the section has been set on foot. I am therefore unable to hold that if the notice is not published in the manner prescribed, the Magistrate loses his jurisdiction to hold an inquiry into the question of possession. In my opinion, the non-publication of the order at or near the subject matter of the dispute is an irregularity by reason-of which this Court can set aside the proceedings only if it is shown that any party has been prejudiced thereby.

Clearly Section 537, Criminal P. C. cures the defect pointed out by learned Counsel for the petitioner. That section refers to any error, omission, or irregularity, in any proclamation, order, or judgment, before, or during trial, or any inquiry or other proceedings under the Criminal Procedure Code, and definitely states that unless any such error, omission, or irregularity has occasioned a failure of justice no finding, sentence or order can be altered or reversed on appeal or revision. In the Explanation appended to that section it is enacted that in determining whether any error, omission, or irregularity in any proceedings under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the

objection could or should have been raised at an earlier stage in the proceedings.

It is admitted that no such objection was raised by the petitioner during the time the proceedings were going on before the Magistrate. It can safely be inferred therefrom that the petitioner had not been prejudiced in any manner. It is admitted that the property in dispute is situated within the local jurisdiction of the Magistrate; it is also conceded that the initial order was notified to Ratan Singh, the petitioner, who was intended to be affected by the proceedings; and it is not questioned that the Magistrate was competent to initiate and carry on proceedings under Section 145, Criminal P.C. All the elements necessary to make an order under Clause 6 of Section 145 consequently existed and the Magistrate was competent to pass the order which he subsequently passed.

11. Much reliance has been placed by the learned Counsel for the petitioner upon the word 'then' in Sub-section 4. But this word applies only to the time or order of the Magistrate's proceedings and was not intended to deprive him of jurisdiction, if the notice had not been duly published. That being so, any omission of the nature indicated by the learned Counsel for the petitioner in his arguments will not be sufficient to vitiate these proceedings; and I am of opinion that this Court ought not to interfere with the decision of the learned Magistrate in this case; though at the same time I desire to impress upon the Magistrate the necessity of a strict compliance with Sub-section (3) of Section 145, Criminal P.C.

12. With these remarks I dismiss the revision.