**Amar Singh Vs. State and Others**

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**SooperKanoon Citation** : sooperkanoon.com/680234

**Court** : Delhi

**Decided On :** Aug-30-1984

**Reported in** : 1985CriLJ210; 1984(3)Crimes205; 2003(7)DRJ281; 1984RLR639

**Judge** : J.D. Jain, J.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 452; Code of Criminal Procedure (CrPC) , 1973 - Sections 145

**Appeal No.** : Criminal Revn. No. 77 of 1984 (Against order of B.B. Gupta, Addl. S.J., New Delhi, D/- 9-2-1984)

**Appellant** : Amar Singh

**Respondent** : State and Others

**Judgement** :
ORDER

1. The facts giving rise to this revision petition succinctly are that on 24th August 1983 the petitioner - Amar Singh made an application to the Sub-Divisional Magistrate, New Delhi, for initiating proceedings under S. 145 of Cr.P.C. (for short the Code). He, inter alia, alleged that he was owner of plot No. 1598, measuring 235 sq. yards, at Basti Bhoop Singh, Nangal Raya, New Delhi. The accommodation in the said plot comprised a room 10' x 8' and some tin sheds besides open space and the boundary wall. He contended that the aforesaid room had been let out to one Ramesh Kumar while the rest of the plot including the tin

sheds remained in his (petitioner's) exclusive and actual physical possession. Ramesh Kumar died about a year prior to making of the application and thereafter the respondents Karan Singh and his son Trilok Chand illegally took possession of the said room without permission or consent of the petitioner. So, he tried to get the room vacated from respondents 1 & 2 but instead of vacating the same the respondents started threatening him and his family members with dire consequences. On 14th January 1983 both respondents 1 & 2 tried to take illegal possession of the rest of the plot which was in actual physical possession of the petitioner but their attempt was foiled by the timely action of the petitioner. However, by way of precaution the sons of the petitioner Babu Lal, and Raj Singh, started sleeping at the said plot so that the respondents may not try to repeat their attempt to grab the plot. On the night between 28th and 29th June 1983 at about 12.30 a.m. respondents 1 to 7 forcibly and illegally took possession of the entire plot which, as stated above, was in actual and physical possession of the petitioner, by unloading a truck of bhusa (dry fodder) and they also caused grievous hurt to Bhanwar Singh, son-in-law of the petitioner and Babu Lal Ramesh and Raj Singh sons of the petitioner. However, they were saved by timely help of people of the locality. The police of Delhi Cantonment also arrived at the scene of occurrence and Bhanwar Singh was sent for medical examination to Safdarjang Hospital. However, he was discharged on 30th June 1983. Thus, he complained that the respondents had illegally and forcibly trespassed into the plot in question and dispossessed him by taking law in their own hands. So, he apprehended breach of peace at the hands of the respondents over possession of the said plot. He asserted that he and members of his family apprehended danger to their lives if they took any action against the respondents or tried to enter the plot, especially when the police was trying to help the respondents for reasons best known to them and they had falsely registered a case implicating the son-in-law and sons of the petitioner in a case under S. 452, I.P.C.

2. The Sub-Divisional Magistrate called for a report from the Station House Officer, Delhi Cantonment and the latter submitted his report dt. 6th September 1983. According to the police report, which was in the form of paradise comments, the local inquiries had revealed that late Shri Ramesh Kumar and his father Karan Singh, respondent 1 had been using the whole of the plot in question since long

and even after the death of Ramesh Kumar, his wife Smt. Krishna Devi and his father Karan Singh had been using the entire plot of land without any interference by any other person. The police controverter the claim of the petitioner to be in possession of any part of the said plot. The police also refuted the contention of the petitioner that on 14th January, 1983 respondents 1 & 2 tried to take illegal possession of the rest of the plot saying that the petitioner never made any such complaint to the police and in fact the petitioner had never been in possession of any part of the plot in question. Further, according to the police report, Zile Singh, respondents 5, informed the police telephonically on the night between 28/29th June 1983 that a quarrel was going on at the plot in question. On receipt of the said information, police arrived there and a case under S. 452 IPC (FIR No. 241/83) was registered against S/Shri Bhanwar Singh (son-in-law of the petitioner) and Babu Lal and Raj Singh & Pappu, sons of the petitioner, on the basis of the statement made by Karan Singh, respondent 1. According to Karan Singh, all the three accused in the said case had come to the plot and asked him to vacate the same Babu hit two of his buffaloes and drove them out of the plot and Bhanwar Singh pushed him and threatened him with dire consequences if he did not vacate plot. So, he shouted for help which attracted his son Trilok Chand, respondent 2 and some other persons who were sleeping in the neighborhood. Thus, he was rescued by his son and neighbours. Bhanwar Singh hit Trilok Chand with a lathi and in the course of scuffle Bhanwar Singh too received injuries. Both Bhanwar Singh and Trilok Chand were taken to Safdarjang Hospital for medical examination. However, the medico-legal reports indicated that they had sustained simple injuries. The police vehemently denied that there was any apprehension of breach of peace in the locality with respect to the plot in question.

3. After perusing the complaint as well as the police report the learned Magistrate was of the view that the police report was biased and irrelevant. He observed that it had exceeded its mandate inasmuch as the police had virtually given findings as to who was in actual possession of the land whereas the task of the police, was simply to inform the court if any dispute likely to cause breach of peace existed or not. So, he dubbed the police report as highly partisan and unreasonable and observed that he was satisfied that there did exist apprehension of breach of peace arising out of the dispute between the parties over the possession of the

plot in question. Hence, he passed a preliminary order under S. 145(1) of the Code on 22nd November 1983.

4. Feeling aggrieved by the said order the respondents filed a revision petition in the Court of Session who vide impugned order dt. 9th February 1984 set aside the preliminary order and quashed the proceedings under S. 145 of the Code. The learned counsel for the petitioner has assailed the impugned order primarily on the ground that the learned Additional Sessions Judge while allowing the revision petition did not confine himself to the facts and the material on the basis of which the preliminary order had been made by the Magistrate. On the contrary he travelled beyond the scope of the revision petition and took into consideration facts and documents which had been placed on record subsequent to the said order. He thus slipped into a grave error of embarking upon investigation of facts which was within the province of the Magistrate in view of sub-section (4) of S. 145 which casts a duty on the Magistrate to decide on the basis of the statements filed by the parties and the evidence, if any, produced by them whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute. On browsing through the impugned order, I find considerable merit in this contention. The learned Additional Sessions Judge has referred to some documents including a receipt dt. 25th February, 1971 which was placed by the respondents on record along with their written statement etc. Obviously, the learned Additional Sessions Judge was not justified in looking to documents and other material on record on which the satisfaction of the Magistrate did not rest. He could examine the legality and validity of the preliminary order only on the basis of the material which had influenced the satisfaction of the Magistrate. Even then as a revisional court he could not go into the sufficiency of the information which had satisfied the Magistrate. (See R. H. Bhutani v. Mani J. Desai, : 1969 CriLJ13 ), wherein it was held that :

'The satisfaction under sub-section (1) of S. 145 is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, thereforee, in his discretion which, no doubt has to be exercised in accordance with the well recognised rules of law in that behalf ..... The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both

from the police report or 'from other information' which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate'.

5. It is thus manifest that the impugned order is vitiated by this material irregularity on the part of the learned Additional Sessions Judge and as such it cannot be sustained. However, as urged by the learned counsel for the respondents, I have thought it fit to examine the legality and propriety of the preliminary order in exercise of the revisional jurisdiction of this Court.

6. The learned counsel for the respondents has made a twofold submission. In the first instance, he has urged that the petitioner did not approach the Sub-Divisional Magistrate with clean hands inasmuch as he suppressed some vital facts in order to obtain a favorable order. As pointed out by him, the petitioner suppressed the fact that Karan Singh, respondent 1 was father of the deceased tenant. He also suppressed the fact that Smt. Krishna Devi, being widow of the deceased, was in possession of the plot in dispute. Secondly, the petitioner has tried to take advantage of his own wrong inasmuch as after the death of Ramesh Kumar he made frantic efforts to somehow dispossess his widow and father. So, he connected the story of his being in possession of the rest of the plot excluding the tenanted room although the fact was that the whole of the premises were in the tenancy and possession of Ramesh Kumar, deceased. He has also invited my attention to para 4 of the application of the petitioner under S. 145 of the Code in which he had stated that the petitioner tried to get the room vacated from respondents 1 and 2. Thus, the precise argument advanced by the learned counsel for the respondents is that he had no right or justification to get the demised premises vacated and this para shows clearly the mala fide intention of the petitioner that his prayer for initiation of proceedings under S. 145 was just a subterfuge to somehow throw out the respondents from the plot in question. The further arguments of the learned counsel for the respondents is that the Sub-Divisional Magistrate should have taken into consideration all these facts which were speaking eloquently about the evil design of the petitioner and as such the Sub-Divisional Magistrate committed a serious error in discarding the police report

which reflected the true state of affairs. There was hardly any justification or basis for the learned Magistrate to discard the police report as being biased or partisan.

7. On a consideration of the whole matter, I am unable to find any fault with the approach of the learned Sub-Divisional Magistrate. Admittedly, there was a fight between the parties on the night between 28/29th June, 1983 in which two persons one from each party sustained injuries. It is true that on the basis of the report lodged by respondent 1 a case under S. 452 I.P.C. has been registered against the sons and son-in-law of the petitioner. However, it is difficult to infer from this fact alone that the allegations contained in the FIR must be correct as the same have yet to be substantiated at the trial. Mere pendency of a criminal case under S. 452 I.P.C. does not stand in the way of the Magistrate assuming jurisdiction under S. 145 of the Code and drawing up a preliminary order provided, of course, the conditions laid therein are satisfied. The petitioner has come out with a parallel version that in fact he was in actual physical possession of the plot in question excepting the room and his sons used to sleep there. So, according to him, it was the party of respondents who were aggressors and tried to throw them out of the plot on the aforesaid night. Under these circumstances, the conclusion drawn by the learned Sub-Divisional Magistrate that there did exist a dispute between the parties which was likely to cause breach of peace cannot be said to be ill founded or untenable. As stated above, the question whether upon the materials placed before him proceedings should be instituted under S. 145 is one entirely within the Magistrate's jurisdiction and the revisional court can interfere with the Magistrate's discretion only in exceptional cases when the order is patently unreasonable and unjustifiable.

8. An arguments was also advanced by the learned counsel for the respondents that the preliminary order was drawn up by the Sub-Divisional Magistrate after about three months of the application made by the petitioner and in the absence of any recurrence of breach of peace since 29th June, 1983 the Magistrate could not justifiably take the view that there was likelihood of breach of peace. In other words, likelihood of breach of peace should have existed not only on the date of application under S. 145 but also on the date of preliminary order under S. 145(1). This argument, to my mind, is utterly misconceived. In R. H. Bhutani's case : 1969

CriLJ13 (supra) the Supreme Court observed that (at P. 18) :

'Therefore, it was said, there was no longer any dispute on the date of the order likely to lead to breach of peace and consequently the order did not comply with the requirements of S. 145(1) and was without jurisdiction. This reasoning would mean that if a party takes the law into his hands and deprives forcibly and wrongfully the other party of his possession, the party so dispossessed cannot have the benefit of S. 145, as by the time he files his application and the Magistrate passes his order, the dispossession would be complete and, thereforee, there would be no existing dispute likely to cause breach of peace. Such a construction of S. 145, in our view, is not correct ..... The proviso is founded on the principle that forcible and wrongful dispossession is not to be recognised under criminal law. So, that it is not possible to say that such an act of dispossession was completed before the date of order. To say otherwise would mean that if a party who is forcibly and wrongfully dispossessed does not in retaliation take the law into his hands, he should be at disadvantage and cannot have the benefit of S. 145.

9. In view of this clear enunciation of law on the subject, there is no room for entertaining such a plea.

10. The upshot of the whole discussion, thereforee, is that the impugned order cannot be sustained and the preliminary order made by the Sub-Divisional Magistrate must be upheld. Hence, the impugned order is set aside and Sub-Divisional Magistrate is directed to proceed with the inquiry in accordance with provisions contained in S. 145 of the Code.

11. Revision allowed.