

Niadar Vs. State

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Court : Delhi

Decided On : Nov-02-1970

Reported in : 7(1971)DLT167

Judge : S. Rangarajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145(8)

Appeal No. : Criminal Revision Appeal No. 332 of 1970

Appellant : Niadar

Respondent : State

Advocate for Pet/Ap. : Rajender Dutt and; Y. Dayal, Advs

Judgement :

S. Rangarajan, J.

(1) This is a reference by the learned Additional Sessions Judge, Delhi (Shri D.K.Khanna) that the attachment of harvested crops may be quashed as, in his view, section 145 of the Criminal Procedure Code is not applicable. I do not appeal from the order, not from the records of the case, as to when actually the dispute arose in this case, all that is known is that the crop

(2) It is, however, stated to me at the Bar by the learned counsel for Fateh Singh that the dispute commenced on 6th April, 1970. In view of the fact that there appears to have been no inquiry regarding this aspect of the matter it seems inappropriate to say anything more about this on a reference by the learned Additional Sessions Judge.

(3) The facts mentioned in the reference are that Fateh Singh moved the Court under s. 145, Criminal Procedure Code, against Niadar on 23rd April, 1970 that he was in cultivating possession of the land in dispute and that Niadar was trying to take forcible possession of the same. He had also instituted a suit in the Court of the Subordinate Judge first class, Delhi, (Mr. M. Sain) and obtained an interim injunction against Niadar restraining him from taking possession of the land. It was further alleged that in spite of the said injunction Niadar was out to cause breach of the peace and that the local police was colluding with him. Fateh Singh had also commenced proceedings under sections 107/151, Criminal Procedure Code, against Niadar and 13 others.

(4) The learned Magistrate called for a report from the S.H.O. Alipur who affirmed that there was a dispute between the parties about the land which was likely to result in breach of the peace. The S.H.O. had also mentioned that proceedings under section 107/151, Criminal Procedure Code, were pending against the parties. He further submitted a Kalendra under section 145, Criminal Procedure Code. It was, however, admitted by the S.H.O. that the crop on the land was already harvested and was lying in the Khalayan.

(5) The question now is with reference to the legality of the reference ordered by the learned Magistrate of the harvested crop. Relying upon two decisions alone among several others many of them, taking the opposite point of view, the learned Additional Sessions Judge has made the above-said recommendation.

(6) The question is one of considerable importance, on which there is a conflict of judicial opinion. Section 145 of the Criminal Procedure Code was amended in the year 1923 by introducing subsection (8) which reads as follows :-

"If the Magistrate is of opinion-that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property and, upon the completion of the inquiry, shall make such order turn the disposal of such property, or the sale-proceeds thereof, as he thinks fit.'

In addition, there is sub-section (4) of section 145 of the Code as amended in the year 1955 which contains the following proviso :-

'PROVIDED also that, if the Magistrate considers the case one of emergency he may at any time attach the subject of dispute, pending his decision under this section'

(7) The above two provisions relate to two different aspects of the dispute. While sub-section (4) of section 145 relates to attachment of the property in dispute, which is immovable property; sub-section (8) of section 145 of the Code provides for making orders concerning the proper custody or the sale of any crop or produce of the property (immovable property) which is the subject matter of the proceedings under section 145 of the Code. This amendment, of the year 1923, was itself occasioned by the difficulty which was felt concerning the jurisdiction of the Magistrate in proceedings under section 145 of the Code to make an order concerning the crop or other produce of the immovable property in dispute.

(8) Even prior to the said amendment, of the year 1923, the High Court of Madras had held in (*In re Krishnasami Aiyar*) and (*Srinivasa Pillay v. Sathayappa Pillay*) that the mere fact that the crops which are the subject matter of dispute had been removed from the land was not sufficient to oust the Jurisdiction of the Magistrate. In the latter case since there had been no inquiry or even information as to when the crop had been removed the matter was remitted to the concerned Magistrate for the purpose of ascertaining this fact Both the said decisions of the Madras High Court were referred to and followed in *Rahimdino and others v. Emperor*. It was stated by Aston, A.J.C., that if it had been the intention of the legislature to restrict the meaning of 'crops' in subsection (2) of section 145 to crops standing on the land, the expression 'standing crops' would have been used. It was further considered that the 'utility of the section would be very much reduced, if a

'restricted meaning' were applied to the word 'crops' in section 145, Clause (2).

(9) , The learned Additional Sessions Judge has, however, referred to the decision in *Relumal v. Pherumal Madammaal** (wrongly referred to as 20 CLR 857) the corresponding reference being (*Relumal v. Pherumal and another*)'. Even though the said decision seems to have been rendered later than *Rahirndino* the said decision does not appear to have been noticed. A conclusion, contrary to that in *Rahemdino*, was reached in *Relume* following the decision of the Calcutta High Court in *Ramxan Ali v. Janardhan Singh**. This decision was also rendered in the year 1902, long prior to the said amendment of the year 1923 placing sub-section (8) of section 145 on the statute book. The Division Bench merely concerned in *Ramzan Ali* with the language of sub-section (2) of section 145 of the Code and it understood the said expression as referring only to the crops or other produce of land attached to the land.

(10) The Patna and Orissa High Courts have, in a number of cases, followed that view taken in *Ramxan Ali*. One of the decisions of the Patna High Court has been relied upon by the learned Additional Sessions judge, namely 40 CLR 323, the corresponding reference being (*Rajindra Lall v. Bich Kurmi and others*). It was stated in *Rajindra Lall* that crops cut and severed from the land are from their very nature movable property and that it would be unduly straining the meaning of immovable property, to which alone the provisions of section 145 are applicable, to hold that even crops which were severed fell within the ambit of subsection (2) of section 145 of the Code. Another decision of the Patna High Court holding a similar view is (*Deonandan Singh v. Thakur Singh and others*). In this case the crops which were ordered to be attached had already been cut and were kept in the storing place on a plot which was not the subject matter of dispute. *Rahimndino* was distinguished on the ground that from the facts reported in that case it appeared that reaping had begun at least over a portion of the disputed land after the proceedings had been initiated and then reference was also made to the contrary view in *Radluma Sirinivasa Pillay* was also distinguished on the ground that the Magistrate's order was confined to crops harvested since the beginning of the disturbance.

(11) In *Jalumuru Kumarju v. Kenguva Suryanarayana and another*, Narasimham J. (as he then was) held that the crops which had been removed from the property in dispute and stored elsewhere long before dispute cannot be the subject matter of the proceedings under section 145 of the Criminal Procedure Code. Narasimham J. emphasized the fact that the crops had been cut and removed long before the commencement of the proceedings.

(12) The Allahabad High Court has taken the view in *Gaya Prasad and others v Emperor* that section 145 of the Code being a preventive section it should be given a liberal interpretation and in the dispute as regards land the Magistrate would have clearly jurisdiction to pass an order relating to movable property which may be attached to the land or appertaining to it. In that case the attachment was of trees which had already been severed from the earth. Referring to the earlier case of the same High Court in *Chaurasi v Rama Shanker*, it was stated that the crop had been actually removed from the land and it could not, therefore, be a crop or produce of the land. Referring to yet another decision of the same High Court in *Sita Das v. Jaisri Das* it was stated that the crops had not only been cut and removed but had been stored in the Khalyan where it had been mixed with crop from other fields. Reference was also made to the decision of Shadi Lal J. in *Sajad Hussain v Nanak Chand* where trees which were severed from the land in dispute but still lying on the spot were held not to come within the purview of section 145 (2) of the Code, but on the facts it was seen in that case that the Magistrate had only forbidden the disturbance of possession of the disputed land where the cut wood was also lying.

(13) In a fairly recent decision of the Madras High Court in *Rev. A. Anmpus v. Alumuri Subba Reddi Phnchapakesa Ayyar J* held the view that trees which are cut and severed a few hours or days before the preliminary order and which are still lying on or near the land come within the expression of crop or produce of land which could be attached along with the land under the said section. The view of Malik J. in *Goyal Prasad*, that the language of section 145 must be liberally construed in this regard, was concurred in. There was need to arm the Magistrates with sufficient power to attach properties in dispute between fighting factions and persons and prevent breaches of the peace. A Magistrate had the power, under

section 145 of the Code, even to direct a party to restore properties whose possession had been forcibly taken from others within two months before the order. 'It is obvious, therefore, that trees which have just been cut and severed a few hours or days before the preliminary order and are still lying on or near the lands must be within the clear purview of a Magistrate who can restore possession of the lands itself with all the trees etc., on it on the ground of taking forcible possession within two months before.'

(14) It seems to me that the view of the learned Additional Sessions Judge that merely because the crops in question had been cut and removed to the Khaliyan, they could not be ordered to be attached is one which cannot be supported on a true understanding not only of the language of section 145 of the Code but also the spirit of the same. There are many conceivable situations when, in the course of a dispute relating to immovable property, one of the parties may forcibly cut and carry away the crops and this may well be technically speaking, even prior in point of time to the date of the preliminary order. To say that even in such a situation the Magistrate seized of the proceedings under section 145 of the Code could not take any action with reference to the same would be to unduly lessen the utility of the proceedings under section 145 of the Code. If the Magistrate has power under section 145 of the Code to restore to the successful party possession of property forcibly taken away within two months of the date of the preliminary order, I can find no warrant on the language employed in section 145 of the Code to exclude the Magistrate's jurisdiction in the matter of restoring the crops forcibly cut and carried away from the land in dispute provided he can take effective action to secure such crops so taken away. If he cannot attach the crops or produce from such property it would follow that he would not be in a position to restore possession of the same. In none of the cases which have been cited before me do I find any reference made to section 145 (8) and the same having been introduced by way of amendment in the year 1963. The language employed therein is significant. It refers to 'any crop or other produce of the property, the subject of dispute' etc. The subject in dispute is no doubt immovable property but sub-section (8) makes specific reference to the jurisdiction of the Magistrate to provide for proper custody or sale of the crop or other produce of the property in dispute. Even this sub-section does not, ex facie, limit the Magistrate's jurisdiction to the

crop or other produce standing on the property. No such words have been employed here. Nor has any such expression been employed in any portion of section 145 of the Code expressly limiting the Magistrate's jurisdiction to crops or produce standing on the land. Even the language of sub-section (2) is in wide terms. It reads:-

'FOR the purposes of this section the expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.'

One of the consequences of understanding the said expression 'crops' as only relating to standing crops on the land would be to take away the jurisdiction of the Magistrate concerning the crops once it is severed from the land. On the other hand the consideration, which is equally important, is that under the guise of initiating proceedings under section 145 of the Code an attempt will not be made to regain crops which had already been harvested even prior to the actual disputes arising between the parties. For these reasons it seems to me that the recommendation made by the Additional Sessions Judge in this case cannot be accepted even without ascertaining the necessary facts as to when and in the circumstances in which the crops were harvested and removed to the Khaliyan. The mere severance of the crops from the land could not take away the jurisdiction of the Magistrate to order attachment of the same. In a proper case the removal of the same from the disputed land also would not make any real difference. In many cases the harvested crops would have to be taken from the land concerned to a nearby thrashing floor. It may be possible in such a case for the Magistrate to effectively exercise his jurisdiction concerning the crops so removed by attaching the same if he is satisfied that it was due to disputes between the parties in respect of which proceedings under section 145 of the Code have been initiated. All that I am concerned to point out in this case is that the mere severance of the crops or even their removal to a nearby thrashing floor would not deprive the Magistrate to attach those crops if the same happened during the pendency of the dispute and it is a case where the Magistrate feels that in the event of his finding the person so taking away the crops to be the wrong-doer that is taking the crops away forcibly within two months of the date of the preliminary order he can proceed to attach

them and in a proper case direct possession of the same to be restored to the rightful owner. It seems to me that this is the view which will accord fully with the language and the spirit of section 145 of the Code and would not in any way impair the utility of proceedings under section 145 of the Code. In the light of these observations the matter is remitted to the learned Magistrate for the purpose of making an inquiry as to the circumstances in which the attachment was made and to pass an order according to the observations made in this judgment.

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