

Sakhi Mohd. Vs. State

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Court : Delhi

Decided On : Jan-22-1974

Reported in : 1974RLR321

Judge : P.S. Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 145(4)

Appeal No. : Criminal Revision Appeal No. 387 of 1973

Appellant : Sakhi Mohd.

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; D.C. Mathur, Advs

Judgement :

P.S. Safeer, J.

(1) The grievance raised by this petition is that the Additional District Magistrate, Delhi should not have affirmed the order dated the 14-11-1973 passed by the Magistrate attaching shop Nos. 279 and 279A situated in Chowfc Jama Masjid, Delhi in exercise of the jurisdiction provided by section 145(4) of the Criminal Procedure Code, hereafter called 'the Code'. In the course of examining the various aspects of the litigation apart from the orders passed by the Civil Court, I have gone through the preliminary order passed under section 145(1) of the Code. Section 145(1), is :-(.....,)

(2) A competent order passed under the afore-quoted provision must contain the grounds on the basis of which the Magistrate may have felt satisfied that he should require the parties concerned in the alleged dispute to attend his Court in person or by pleader within a time to be fixed by him in order to put in written statement of their respective claims as respects the fact of actual possession of the subject matter of dispute Such a statement of grounds leading to the satisfaction of the Magistrate is essential to the parties to know precisely as to what persuaded the Magistrate to pass the order and as to what case they are to plead through their written statements. The preliminary order passed in this case in its relevant part, is :-

'WHEREAS from a perusal of Kalandra dated 2-11-1973 and having both the parties present with their counsels I am satisfied that the dispute likely to cause a breach of peace exists between the above mentioned two parties concerning shop Nos. 279 and 279A, Chowk Jama Masjid, Delhi situated within the local limits of my jurisdiction and, therefore, I, K.N. Bose, S.D M. (Darya Ganj) hereby order that the said parties shall appear in my court (Room No. 27) 1st Floor, Tis Hazari Courts on 3rd December, 1973 at 10.00 a.m. and put in such documents in support of their respective claims.'

(3) The learned Magistrate at the time of passing the order ought to have taken into consideration the actual terms employed in section 145(1) of the Code which required of him to state the grounds of his satisfaction

and I find that the order is arbitrary and illegal. In some exceptional case where for instance the proceedings under section 145 of the Code may have been initiated on a complaint and where the Magistrate may have examined the complainant, the statement so recorded by him may be deemed to be furnishing the grounds of satisfaction. It would be another exception where having been persuaded the Magistrate may have visited the spot and recorded the results of inquiry before passing the preliminary order.

(4) I may, however, emphasise that the requirement of the statute in section 145(1) is that the order should be such which may contain the grounds leading to the satisfaction of the Magistrate which may be easily available in the order itself when any Court of superior jurisdiction is called upon to deal with it. If the Magistrates are given the wide option to state that on perusal of the Kalandra they are satisfied that the order be passed then the possibility of passing stereotyped orders without actually applying their minds to the circumstances which may or may not be Prima-facie disclosing any actual apprehension of breach of peace would not be ruled out. No order which carries a taint of arbitrariness can be determined as a judicial order.

(5) Exercising suo motu jurisdiction provided by section 439 of the Code I set aside the preliminary order as well as the order of attachment passed by the Magistrate on the 14th of November, 1973 and direct that the parties should appear before the learned Magistrate once again on the 7th of February, 1974 when he will hear them and pass a speaking order which may satisfy the demands of section 145(1) of the Code.

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