

Rampat and anr. Vs. State and anr.

Rampat and anr. Vs. State and anr.

SooperKanoon Citation : sooperkanoon.com/689800

Court : Delhi

Decided On : Nov-06-1985

Reported in : 1986(1)Crimes1; 1986(10)DRJ76

Judge : Charanjit Talwar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145(1)

Appeal No. : Criminal Revision Appeal No. 141 of 1985

Appellant : Rampat and anr.

Respondent : State and anr.

Advocate for Pet/Ap. : B.S.C. Singh,; Seema Mehra,; Ramesh Chandra and;

Judgement :

Charanjit Talwar, J.

(1) By this petition petitioners Rampat and Nafe Singh are challenging the legality of an order passed by the Executive Magistrate (Sub-divisional Magistrate) on 21st June, 1985. That was a composite order; first part is a preliminary order under section 145(1) of the Code of Criminal Procedure, 1973 and the second directs attachment of the property. That second part presumably was passed under section 146(1) of the Code.

(2) I have heard the learned counsel for the parties at length.

(3) In the view which I am taking it is not necessary to deal with the legality of the preliminary order under section 145(1) as in the facts and circumstances of the case, particularly because of the rival claim of the parties, that part of the order cannot be said to be unwarranted.

(4) The part of the order attaching the property reads as under :-

'In the interest of both the parties, to avoid any mis happening, the property in dispute is hereby attached.'

(5) I may notice here that the petitioners had put in appearance on 21st June, 1985 before the learned Magistrate. Along with objections a number of documents were filed by them. Mr. Bawa invited my attention to those documents in support of his contention that even prima facie it cannot be held that there existed any dispute regarding the property in question. As I have noticed above, the order passed under section 145(1) of the Code, in my view, does not suffer from any infirmity and as such I am not going into the merits of the case. The order directing attachment of the property, however, does not fall within the ambit of section 146(1). The said provisions reads as follows :

'146.(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof.'

(6) The observation of the learned Magistrate, quoted earlier that it was to avoid any mis happening that the property needs to be attached, does not constitute an ingredient of the above-referred provision. The provision is meant to be exercised in a case of emergency or when the Magistrate is satisfied that he is unable to decide as to who is in possession of the subject-matter of the dispute. Apparently

the order has to be a speaking order. In the present case the view of the Magistrate is that in the interests of the parties concerned such an order is to be passed. Any discussion further even on this aspect of the matter may prejudice the rights of the parties in the pending proceedings. Suffice it to say that the ingredients of section 146(1) of the Code not having been made out, that portion of the order directing attachment of the property in dispute is liable to be set aside. I order accordingly.

(7) In the result the petition is partly allowed.

(8) I find from the record that the petitioners herein are party No. 1 before the trial Court. They have already filed their objections and documents. The other party, i.e., party No. 2, is yet to file her written statement and documents in support of her case. Learned counsel appearing on her behalf before me submits that the written statement as well as the documents will be filed within a month from to-day. Mr. Bawa says that he will also file the written statement, if necessary, and other documents within this period. Learned counsel for the parties Jointly submit that the learned Magistrate be directed to expedite the matter and, if possible, decide it within three months. I order accordingly. The record of the trial Court be sent back immediately.