Pradeep Tyagi Vs. State

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Court : Delhi

Decided On : Jul-26-1984

Reported in : 1984(2)Crimes507; 1984RLR528

Judge : J.D. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 145

Appeal No. : Criminal R. Appeal No. 229 of 1983

Appellant : Pradeep Tyagi

Respondent : State

Advocate for Pet/Ap. : R.L. Kohli and; Rajinder Dutt, Advs

Judgement :

J.D. Jain, J.

(1) The facts giving rise to this revision petition which is directed against order dated 26.18.83 of an Additional Sessions Judge setting aside the order of the S.D.M. dated 22.1.83 passed u/s 145(1) and 146(1), Code of Criminal Procedure (for short the Code), succinctly are that respondents 2 to 8 are sons of late Shri Bhagwan Dass. They are residents of village Chhawla and they owned land comprised in reconsolidation khata No. 84 situated within the revenue estate of the said village, jointly with S/Shri Pyare and Surte, sons of Shri Kanahiya, their share

in the said land being 3/4th and the share of Pyare and Surte being 1/4th. Long back Pyare and Surte started residing in a village in District Rohtak and, thereforee, respondents 2 to 8 continued to be in cultivatory possession of the same. At the time of consolidation of holdings, the land allotted in lieu of the land comprised in khata No. 84 was split into two portions, one block having been allotted to respondents 2 to 8 and the other block having been allotted to in the shape of plots to Surte and Pyare. The land allotted to Surte and Pyare comprised khasta Nos. 621/2(0-11) and 578(1-1) Partition of the land so allotted into two blocks was opposed tooth and nail by respondents 2 to 8 who contended that Surte and Pyare having left the village Chhawla since long, they alone were entitled to the entire land allotted in lieu of reconsolidation land. Moreover, they asserted that the land so allotted could not be split into two blocks without their consent as per policy laid in the scheme of consolidation of holdings Having met with no success at the level of consolidation officers they went in revision u/s 42 of the E.P Holdings (C & P F) Act, 1948, as extended to Delhi. The said revision petition was rejected by Shri D.K. Das, Fin. Comm., Delhi, on 14th May 1982. It is contended by the respondents that they have filed a writ petition against the said order and the same, having been admitted, is still pending in this Court, The petitioner Pradeep Tyagi is the General Attorney of Smt. Renu Singh who allegedly purchased khasra No. 621/2 (11 Biswas) from S/sh. Pyare & Surte vide registered sale deed dated 1.9.82. Claiming that he was in possession of the said land (now in dispute) as a Care taker on behalf of vendee, he made complaint to the Sdm, Punjabi Bagh, on 17.1.83 for initiating proceedings u/s 145 of the Code. He contended that the opposite party, viz. respondents 2 to 8 in collusion with officials of the Police Chowki were threatening to dispossess him by resort to use of force and committing trespass. An attempt made by them in this direction a few days earlier was, however, foiled but the opposite party was out to commit breach of peace and had hurled threats of commission of murder & other crimes to achieve their object.

(2) The S.D.M. on receipt of the said complaint, called for a report from the concerned Sho and the latter submitted his report on 18.1.83. He, inter alia, stated that respondents 2 to 8 wanted to occupy the plot illegally and forcibly as they claimed the same to be their ancestral property and contended that Surte and

Pyare had no right to sell the piece of land in dispute. On receipt of the said report the S.D.M made an order on 20.1.83 that both the concerned parties be informed to appear before him on 22.1.83. and they be also directed to maintain status quo till further orders. Accordingly, both the parties appeared before the S.D.M. on 22.1.83 when the respondents 2 to 8 sought an adjournment for filing a reply, request was, however, opposed by the petitioner on the ground that the respondents were interested in delaying the matter. So, after hearing the petitioner and pursuing the police report etc. he was satisfied that sufficient reasons existed for making an order u/s 145(1) of the Code. Accordingly, he drew up a preliminary order assuming jurisdiction in the matter u/s 145(1) of the code. He also made an order attaching the property in question u/s 146 of the Code on the ground that the police report indicated that the situation was such as to render the attachment necessary and that the applicant too was feeling absolutely helpless in resisting any incident of breach of peace at the hands of the respondents who were six in number.

(3) Feeling aggrieved the respondents went in revision against the said order in the Sessions Court. They called in question the legality as well as propriety of order of the Sdm assuming jurisdiction u/s 145(1) on the ground that the circumstances did not warrant the same and that the proceedings under the said provisions of law had been initiated malafide with the sole object of dispossessing them and putting the petitioner Pradeep Tyagi in possession of the disputed land as he happened to be son of a L.A. Collector and had access to the SDM. Further, they assailed the order of attachment u/s 146 on the ground that no case of emergency as envisaged in S. 146 was made out and also that an order u/s 146 could not be made simultaneously with an order u/s 145. The learned Addl. Sessions Judge, after hearing the parties, came to the conclusion that the police report as well as the complaint lodged by the the petitioner before the Sdm indicated that a dispute existed between the parties not only with regard to the title to the land in question but also with regard to possession thereof and the petitioner apprehended his dispossession at the hands of the respondents leading to breach of peace. However, she observed that sufficiency of the material on which the satisfaction of the Sdm was based could not be gone into by the revisional court. As regards the order of attachment, however, she felt that the Sdm could not make

a composite order both u/s 145(1) & 146 and the latter provision could be invoked after a preliminary order u/s 145(1) had been made. It would appear that order dated 20.1.83 was also called in question on the ground that before assuming jurisdiction by making a preliminary order u/s 145(1) the Sdm was not competent to direct the parties to maintain status quo. However this prayer was rejected on the short ground that the respondents ought to have filed a separate revision against the same, which they failed to do, in case they considered that the said order had not merged into subsequent order dated 22.1.83. In the end, however, she set aside order of the S.D.M. dated 22nd January 1983.

(4) The learned counsel for the petitioner has, at the outset, made a valiant effort to canvass that the impugned order should be construed as quashing only the order of attachment made by the Sdm u/s 146 and not the preliminary order made by him u/s 145(1) of the Code. It is for the reason that the Additional Sessions Judge has specifically upheld the legality and the propriety of the order u/s 145(1) in para 4 of the impugned order. On a consideration of the matter, I am not persuaded to accept this proposition. It is for the simple reason that the impugned order in terms set aside order dated 22.1.83 which will naturally imply that the order as a whole stands set aside. It is true that two separate orders one u/s 145(1) and the other u/s 146 were drawn up by the S.D.M. consequent upon the impugned order of 22.1.83 but the sweep of the order under revision is so wide as to cover both the said orders.

(5) Anyhow, I considered it fit to hear the parties against both the aforesaid orders. On a perusal of the complaint and police report especially the endorsement made by the S.H.O, it seems to be abundantly clear that a serious dispute concerning the land in question, both with regard to its title as well as possession, which might have led to breach of peace, did exist between the parties. However, the learned counsel for the respondents drew my attention pointedly to that part of the police report which was made by S. I. Sunil Kumar. It no doubt refers to failure on the part of the respondents to produce any documentary proof regarding their ownership of the land and states that 'the piece of land is lying vacant and there is a dispute over the ownership of land between above two said parties' but the report of the Sho travels further and clearly points out that 'Now, the other party i.e.

Ram Kishan and his six brothers.... ..... want to occupy the plot illegally and forcibly as they claim it their inherited property and according to them Surte and Pyare had no right to sell the piece of land.' It is thus mainfestly clear that there was a dispute between the parties not only in respect of its title but also its possession. Even assuming that the land in question was lying vacant it cannot be said that there could be no dispute about its possession. There is nothing in the language of S. 145 to warrant that one of the parties must be in possession of land and that the possession of such party is threatened by the other causing apprehension of breach of peace. The word 'dispute' as envisaged in this Section would also cover a dispute where both the parties are contending to be in possession of the land without reference to their claim of ownership especially when the land is lying vacant. So, actual possession of land by one of the parties is not a sine qua non for invoking the provisions object is prevention of breach of public peace arising in respect of a dispute relating to immoveable property. The action taken u/s 145(1) is purely preventive and provisional in nature, its only purpose being to ward off commission of breach of peace by any of the contending parties pending formal adjudication of rights of the parties by a competent cavils court. The only postulate for assumption of jurisdiction and initiation of proceeding under this Section is that the Magistrate should be satisfied from the report of a police officer or other information that a dispute likely to cause breach of peace exists. The material on the record does show that such a despite did exist between the parties and the question, whether upon the materials placed before him proceedings should be instituted under this section, is one entirely within the Magistrate's discretion. The High Court will not go into the sufficiency of the information which has satisfied the Magistrate when me case comes before it in revision as the preliminary order passed by the Magistrate is final. (See R.H. Bhutani v. Miss Mani : 1969 CriLJ13). In the instant case noth has come on the record to warrant an inference that the Sdm has exercised the discretion vesting in him arbitrarily or capriciency. The contention of the learned counsel for the respondent that the father of petitioner had access to both the police and the Sdm being himself an officer in the Delhi Administration and as such the report of the 533 police officer is false and fabricated, can not be looked into at this stage and this allegation will naturally form subject matter of the inquiry before the SDM.

(6) The next submission made by Counsel for petitioner is that the learned Additional Sessions Judge slipped into a grave error in holding that an order u/s 146 could not be made simultaneously with an order u/s 145(1). Adverting to opening words of Section 146 'If the Magistrate at any time after making the order u/s 145(1) considers the case to be one of emergency', he has urged that the only condition precedent to the making of an order of attachment u/s 146 is that it must be preceded by an order u/s 145(1) but there is no warrant for the proposition that there must be two separate orders, one u/s 145(1) and the other u/s 146 and that there must be also time lag between the two. I find considerable merit in this submission. The object of attachment is obviously to keep the property in custodia legis so as to prevent the contending parties from causing the breach of the peace in their attempts to obtain the actual possession of property. Naturally, thereforee, such an order must follow and can be made only after the Magistrate assumes jurisdiction in the matter by first making a preliminary order u/s 145(1). As has been often said, S. 146 is a corollary to S. 145 and the proceedings there under are, in fact, complementary to and in continuation of those u/s 145. S. 146 does not exist independently of S. 145 and can come into play only after proceedings u/s 145 are initiated. However, there is neither any basis nor any justification for saying further that there must be a time gap between the two orders. Surely an order of attachment u/s 146 can be made at any time after assumption of jurisdiction by the Magistrate u/s 145 if the conditions envisaged in the former provision exist. In this view of matter, thereforee, an order of attachment can be made immediately after a preliminary order u/s 145 is made. It may be passed separately or it may form part of the same order by which jurisdiction is assumed by the Magistrate. I am fortified in this view by V.K. Rao v. Chandappa : (1977)79BOMLR16 , M.A. Rahaman v. State 1981 Cr. LJ. 1291 and Syed Ahmed v. Rasis Ahmed 1977 Cr. L.J. 550. In the last mentioned case it was observed.

'IT is thus clear that the Magistrate first considered the question of passing of the preliminary order and after being satisfied he made a preliminary order and there after he considered the question of attachment of property and then made an order attaching the property. There is nothing in Section 146(1) Cr. P.C. to indicate that these two orders must be written out separately. As a matter of fact, the Magistrate concerned has exercised his independent mind on both these

questions separately in the impugned order. Merely because half the order was not written out first and the second half was written out subsequently on separate pieces of papers, does not imply that that the impugned order is legally vitiated.'

(7) Hence Additional Sessions Judge fell into grave error in setting aside the order of attachment u/s 146 merely because it was incorporated in the same order by which he had assumed jurisdiction u/s 145(1). The impugned order is thereforee, liable to be quashed.

(8) Lastly, the learned counsel for respondents has made an earnest endeavor to urge that the order of attachment cannot be sustained even on merits in as much as the materials placed before the Sdm did not make out a case of emergency and at any rate the learned Magistrate has not expressly said so. It is true that the learned Magistrate has not used the word 'emergency' while directing the attachment of the property in question but it is quite explicit from what he has said that he considered the instant case to be one of emergency. The operative part of the impugned order reads as under:

'Iam, thereforee, satisfied that sufficient reasons exist for passing an order u/s 145(1) Cr. P.C. Further as it has been suggested in the police report that situation is such as necessitates attachment of the disputed property. The applicant has also stated that the respondents are brothers and the applicant is entirely helpless to avoid any incident of breach of peace. thereforee, order u/s 146 Cr. P.C. is passed. Parties are directed to appear before this court on 24.1.83.'

(9) It is crystal clear that the learned Sub Divisional Magistrate has spelt out the circumstances which weighed with him while making an order of attachment u/s 146(1). So, the mere omission on his part to use the word 'emergency' can hardly be of any consequence. It is well settled that where materials on record satisfy the court that an emergency regarding the property in dispute did exist which would justify the passing of an order of attachment it would not be appropriate or even legitimate for the revisional court to interfere with the order merely because the order itself does not say in so many words that it is a case of emergency. Hence 1 find no substance in this contention of the respondents.

(10) To sum up, thereforee, this revision petition succeeds. The impugned order is accordingly set aside and the order made by the Sdm on 22.1.83 both u/s 145(1) & 146(1) of the code is hereby restored. He shall now proceed with the inquiry in accordance with law as expeditiously as possible preferably within 6 months from the date both the parties appear before him. The parties are directed to appear before him on 22.8.84.