

Anand Ram Nanda Vs. the State

Anand Ram Nanda Vs. the State

SooperKanoon Citation : sooperkanoon.com/695559

Court : Delhi

Decided On : Oct-30-1985

Reported in : 1986CriLJ2008

Judge : G.R. Luthra, J.

Appellant : Anand Ram Nanda

Respondent : The State

Judgement :

ORDER

G.R. Luthra, J.

1. The present petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) is for quashing a preliminary order under Section 145 and an order attaching, under Section 146 of the Code, a property No. 5229-31, Sarai Hafiz Banna, Gandhi Market, Sadar Bazar, Delhi. These orders were passed on 9th Aug. 1985 by Shri G. S. Chaturvedi, SDM, Kotwali, Delhi.

2. The impugned orders were passed on an application dated 8th Aug. 1985 of one Rakesh Nanda, who claims to be in possession of the property in question, as a tenant of the petitioner. It was alleged in that application that there was dispute about the possession of the aforesaid property on account of which there was possibility of breach of peace and, therefore, the proceedings under Sections 145

and 146 of the Code be taken. Vide order under Section 145 of the Code, the learned S.D.M. called upon the parties, i.e., the present petitioner and Rakesh Nanda to appear before him on Sept. 3, 1985 and to put in their respective written submissions, documents and list of Witnesses, if any, in support of their respective claims regarding the possession of the property in dispute (described already). Simultaneously, the learned S.D.M. also passed an order under Section 146 of the Code attaching the property by making the following remarks:

Whereas I have heard counsel for first party at length and I have decided that I am unable to satisfy myself as to which of the said parties is in possession of the suit property.

3. It is contended by the petitioner that the aforesaid orders are illegal, that the property could not be attached and that, therefore, the same be set aside. The petitioner has also stated the history as to how the disputes started and went on but I am not mentioning the entire history as it is not relevant for deciding this petition. However, only one thing is being mentioned that a suit was brought by Rakesh Nanda in a civil court which is still pending and in that suit also a temporary injunction is in force to the effect that status quo should be maintained.

4. First of all I take up the question of legality of the order passed under Section 146 of the Code. The relevant portion of Section 146 is Sub-section (1) which reads as under:

146. Power to attach subject of dispute and to appoint receiver.- (1) If the Magistrate at any time after making the order under Sub-section (1) of Section 145 considered 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:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to

the subject of dispute.

5. It is clear from the aforesaid provision that attachment of a property can be done in any of the following three situations:

(i) If there is emergency to attach the property.

(ii) If the Magistrate decides that none of the parties was in possession on the date of the preliminary order under Section 145 of the Code.

(iii) If the Magistrate is unable to satisfy himself as to which of the parties was in possession of the subject of the dispute on the date of the preliminary order.

6. It is apparent from the language of Sub-section (1) of Section 146 of the Code that as far as the first situation is concerned, i.e., in case of emergency, attachment can be ordered at once even without going into the merits of the respective claims regarding possession of the parties. But it is equally clear that the remaining two situations will arise only after the parties have been given opportunity of leading evidence and of being heard. That means that the attachment in the remaining two situations can be ordered only at the time of making final order in the proceedings under Section 145 of the Code. This view finds support from a Division Bench judgment of Allahabad High Court in *Km. Bani Bose v. District Magistrate, Allahabad*, 1985 All Cri R 3231986 All LJ 1236. Following are the relevant observations:

The first situation in which an order of attachment can be passed is when the Magistrate considers the case to be one of emergency. This jurisdiction can be exercised at any time after making an order under Sub-section (1) of Section 145.

The remaining situation in which the Magistrate in the exercise of powers under Sub-section (1) of Section 146 can attach the subject of dispute come into existence only at the final stage of the proceedings after the preliminary order. The final stage as envisaged is the stage of Sub-section (4) of Section 145 together with the proviso thereto. It is only in proceedings under that provision that the Magistrate can decide that none of the parties was then in possession or he is unable to satisfy himself as to which of them was then in possession of the subject

of dispute.

7. In the present case it was without going into any evidence and without hearing the parties and in fact without even notice to the petitioner, the order of attachment was made. The order does not say that there was any emergency. It was passed because the learned Magistrate was unable to decide as to who of the parties was in possession. Hence the said order can be made only at the final stage and that being so, the order was without jurisdiction and liable to be quashed on that ground alone.

8. Further it is apparent from Section 145 of the Code that a preliminary order under that section can be made when an Executive Magistrate is satisfied that the dispute likely to cause a breach of peace exists concerning any property. That means, there must be satisfaction of the Executive Magistrate before such an order can be passed. In the present case, there is nothing in the order passed under Section 145(1) of the Code that the learned Magistrate was satisfied as to the existence of breach of peace. He merely mentioned that it had been stated (referring to application of Rakesh Nanda) that there was imminent danger of breach of peace over the possession of the property. That means that the satisfaction of the Magistrate required under Section 145 of the Code never existed and it was merely the assertions of the applicant Rakesh Nanda which were being repeated in the order.

That itself is a sufficient ground for setting aside the order under Section 145 of the Code. Further it was held in *Ram Sumer Puri Mahant v. State of J.P.* : AIR 1985 SC472 that when a civil litigation was pending for the property wherein the question of possession is involved and had been adjudicated, initiation of a parallel criminal proceeding under Section 145 of the Code would not be justified.

9. In the present case also a suit, instituted by Rakesh Nanda, is pending and an injunction order directing the present petitioner to maintain the status quo had been issued. In the order of the learned Magistrate under Section 145 of the Code, there is a mention of said litigation in the following words:

Whereas it has also been stated that a civil suit for permanent injunction is pending in the court of Shri S. M. Chopra, Sub Judge 1st Class, Delhi and in which an order has been passed directing the parties to maintain status quo in respect of possession and the nature of the superstructure of the suit property mentioned above.

10. In view of the aforesaid Supreme Court authority, therefore, there is hardly any justification for the proceedings under Sections 145 and 146 of the Code specially when there is no mention that the learned Magistrate was satisfied as to the existence of any possibility of breach of peace.

11. I, therefore, accept the petition and quash both the impugned orders under Sections 145 and 146 of the Code.

12. A copy of this order shall be sent to the learned Magistrate concerned along with the record of his court for information and necessary action.

13. Criminal Misc. (Main) 903 of 1985 stands disposed of.