

Koshi Varghese Vs. State

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Court : Kerala

Decided On : Nov-25-1952

Reported in : 1954CriLJ194

Judge : Sankaran and; Vithayathil, JJ.

Appellant : Koshi Varghese

Respondent : State

Judgement :

Vithayathil, J.

1. The first counter petitioner in Cr. M. P. No. 849 of 1951 of the Ponkunnam Stationary First Class Magistrate's Court is the revision petitioner. The petitioner in that case moved for action being taken under Section 145, Criminal P. C. in respect of a property and the Police reported to the Magistrate that a dispute likely to cause a breach of the peace existed and that it was necessary to take action under the section. The learned Magistrate, however, held that there was no justification for action being taken under Section 145 since the matter in dispute was pending before the civil Court.

From this order the Prosecuting Sub-Inspector of Police, Kottayam, filed a revision petition before the District Magistrate, Kottayam, and the learned District Magistrate by his order dated 4-2-1952 allowed the revision petition holding that it

was a fit case in which action should be taken under Section 145, Criminal P. C. By separate proceedings he passed a preliminary order Under the section and placed the property under attachment. The file on the subject was also ordered to be transferred to his Court.

2. The main ground urged in this revision petition is that the learned District Magistrate had no jurisdiction to set aside the order of the Stationary First Class Magistrate. There can be no doubt that this contention is well founded. It is only in cases coming under Sections 436 and 437, Criminal P. C. that the District Magistrate can himself take action in the exercise of his revisional powers. In other cases he has to report for orders of the High Court.

Section 435 gives the District Magistrate power to call for and examine the record of any proceeding before a subordinate Court. But except in cases coming under Sections 436 and 437, namely, cases of improper discharge of an accused or improper refusal to commit a person for trial by the Sessions Court, he has to report for the orders of the High Court, the result of such examination. Section 438(1) reads thus:

The Sessions Judge or District Magistrate may, if he thinks fit on examining under Section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination and, when such report contains a recommendation that the sentence be reversed or altered, may order that the execution of such sentence be suspended, and if the accused is in confinement, that he be released on bail or on his own bond.

It has been held in various cases that the District Magistrate has no jurisdiction under this section to set aside an order passed by a subordinate Magistrate under Section 145, Criminal P. C. Reference may be made to - 'Luti Singh V. Ramkirit Singh' AIR 1941 Pat 105 (A). Agarwala J. observed thus in that case:

The jurisdiction of the District magistrate with regard to the proceeding under Section 145 is not appellate jurisdiction. He has not even power to revise the order impugned. All he can do is to call for the record of the case under Section 435, and if he considers that the order should be interfered with, his duty is to refer it to

this Court under Section 438.

To the same effect is the decision of the Patna High Court in - 'Ram Kumar Lal v. Thakkur Ojha' AIR 1922 Pat 554 (B). The Calcutta High Court also has held so in - 'Kedarnath v. Bijoy Mandal' AIR 1S29 Cal 751 (C) and - 'Nripendra Chandra v. Sasadhar' AIR 1929 Cal 805 (D). In the latter case Pearson and Patteison JJ. observed thus:

It appears to be settled law that District Magistrate has no authority in law to direct a Subordinate Magistrate to institute proceedings under Section 145, Criminal P. C. : whether such proceedings should or should not be taken is entirely a matter within the Magistrate's own discretion.

In a later case of the Calcutta High Court, namely, - 'Mukhudhari Shao v. Ajodhya Shao' AIR 1949 Cal 241 (E), Sen J. held that a Magistrate under Section 145 and that if he is of opinion that the order of the Magistrate is wrong he can only report to the High Court.

In - 'Maung San E v. Maung Mye Du' AIR 1928 Rang 292 (F), the Sub-Divisional Magistrate rejected a petition presented by a party for action being taken under Section 145, Criminal P. C. The District Magistrate in the exercise of his revisional powers set aside the order and directed the Sub-Divisional Magistrate to make further enquiry into the matter. It was held that the order of the District Magistrate was wrong and that he could only make a reference to the High Court under Section 438.

We have, therefore, no doubt that the District Magistrate had no jurisdiction to set aside the order of the Stationary First Class Magistrate in the exercise of his revisional powers.

3. The further question for consideration is whether the District Magistrate can, apart from his power to set aside an order passed by a subordinate Magistrate, himself start proceedings under Section 145 in a case in which the subordinate Magistrate has declined to take action under that section.

We do not think that there is anything to prevent the District Magistrate from doing so. He has got concurrent jurisdiction with the First Class Magistrate in the matter of taking proceedings under Section 145. The mere fact that the First Class Magistrate declined to take action under the section cannot be a bar to the District Magistrate taking action if he deems it necessary to do so for the maintenance of peace. In doing so he will not be acting in the exercise of his revisional powers. He will be only exercising the jurisdiction vested in him. It cannot also be said that in such a case he will be setting aside an order passed by the First Class Magistrate.

When the First Class Magistrate has declined to take action under Section 145 it cannot be said that he has passed an order under that section.; It will be a different case if the First Class Magistrate takes action under Section 145 and the District Magistrate sets aside that order and orders that no action need be taken under the section. That will clearly be a case of acting without jurisdiction as laid down in the cases cited above. What was held in those cases was that the District Magistrate has no jurisdiction to set aside an order passed by a subordinate Magistrate under Section 145. In none of those cases was it held that the District Magistrate has no jurisdiction to take proceedings under Section 145 in a case in which a subordinate Magistrate has declined to take action under that section.

In - AIR 1941 Pat 105 (A), the Sub-Divisional Magistrate took proceedings under Section 145, and the District Magistrate set aside that order. In - AIR 1922 Pat 554 (B), the District Magistrate set aside a final order passed by the Sub-Divisional Magistrate under Section 145.

In - AIR 1929 Cal 805 (D) also the facts are similar. In - AIR 1929 Cal 751 (C), the Sub-Divisional Magistrate drew up proceedings under Section 144, Criminal P. C. and the District Magistrate set aside that order and directed the Sub-Divisional Magistrate to draw up proceedings under Section 145.

In - AIR 1949 Cal 241 (E), the Sessions Judge suspended an order for possession passed by a Magistrate under Section 145.

In - AIR 1928 Rang 292 (F), the District Magistrate set aside an order passed by the Sub-Divisional Magistrate under Section 145 and directed further enquiry. It will thus be seen that in none of these cases the question arose as to whether the District Magistrate has got power to take proceedings under Section 145 in a case in which a subordinate Magistrate has declined to take action under that section.

4. There are two decisions of the Calcutta High Court in which the question directly arose for consideration. They are - 'Baida Nath v. Nibaran Chunder' 29 Cal 242 (G) and - 'Benoy Chandra v. Kala Chand' AIR 1926 Cal 1049 (H). In the former case the Police reported to the Sub-Divisional Magistrate that there was likelihood of a breach of peace relating to possession of property, but the Sub-Divisional Magistrate declined to take action under Section 145. One of the parties moved the District Magistrate in the matter and the District Magistrate took proceedings under Section 145. In revision, filed before the High Court from the order of the District Magistrate it was contended that the District Magistrate acted without jurisdiction. Prinsep and Stephen JJ. held that the order of the Sub-Divisional Magistrate declining to take proceedings under Section 145 could not operate as a bar to the District Magistrate taking action under the section.

This decision was followed by Duval and Graham JJ. in - AIR 192S Cal 1049 (H). We find no reason to disagree with the view taken in these cases. We, therefore, hold that the order of the District Magistrate taking proceedings under Section 145 is not bad for want of jurisdiction.

5. On the merits we do not think that we shall be justified in interfering with the exercise of discretion made by the District Magistrate. He has acted on the report of responsible police officers to the effect that, unless the properties were immediately attached there was every likelihood of a serious breach of the peace which might result in bloodshed. We, therefore, find no reason to interfere with the order of [the learned District Magistrate starting proceedings under Section 145, Criminal P. C.

6. The Criminal Revision Petition dismissed.

