

Ram Lal Vs. Mangu

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Court : Rajasthan

Decided On : Jun-02-1959

Reported in : AIR1960Raj216; 1960CriLJ1138

Judge : I.N. Modi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145(1), 145(4) and 145(5)

Appeal No. : Criminal Ref. No. 11 of 1959

Appellant : Ram Lal

Respondent : Mangu

Disposition : Appeal dismissed

Judgement :

ORDER

I.N. Modi, J.

1. (In Chambers) This is a reference by the Sessions Judge Jhunjhunu in a proceeding under Section 145 of the Code of Criminal Procedure, and arises under the following circumstances. The question raised by the reference is whether after the trial Magistrate has dropped the proceedings under Sub-section (5) of Section 145, he has the authority or jurisdiction to order that the property

which was the subject-matter of the proceedings before the Magistrate be returned to a particular party.

2. It is necessary to state a few facts in order to appreciate the point in controversy. The dispute relates to 30 Bighas of agricultural land attached to a well called Chainsing-wali-Kothi in the village Sogra Guwar. The land was entered in the revenue papers as half and half in the names of the petitioner Ramlal and the opposite party Mangu as tenants. The allegations made by the Station House Officer Khetri at whose instance this proceeding was started before the Sub-Divisional Magistrate Khetri were that the land was divided into seven plots out of which the opposite party Mangu was in cultivatory possession of 23 bighas and the petitioner was in possession of the remaining seven bighas and that the latter wanted to take possession of eight bighas which were being cultivated by Mangu and consequently there was an apprehension of a breach of the peace.

The Magistrate took cognizance of the case and passed a preliminary order on the 20th October, 1956 and attached the disputed land pending the decision of the proceeding under Section 145 Cr. P. C. The learned Magistrate eventually came to the finding that the petitioner Ramlal was in possession of seven bighas only, and the remaining twentythree bighas were in the actual possession of the opposite party Mangti. Consequently he declared that Mangu was entitled to possession of the 23 bighas of this land which were in his possession and he issued an order restraining Ramlal from interfering with that possession until Mangu was evicted from possession in due course of law. Ramlal went in revision against this order and the learned Sessions Judge made a reference to this Court recommending that each party be put in possession of 15 bighas of land.

It appears that this reference was not accepted and the case was sent back to the Magistrate with a direction that he should give further opportunity to the parties to file affidavits regarding their actual possession with respect to the various portions of the land in dispute and that he may also, if necessary, summon and examine any of the persons whose affidavits have been filed and after considering the entire material so brought on the record he should decide the case afresh.

When the case went back to the Court of the Sub-Divisional Magistrate and proceedings were started in accordance with the directions of this Court by the Magistrate, it transpired on 6-2-1959, that an application was moved on behalf of the petitioner Ramlal that there was no longer an apprehension of a breach of the peace, and, therefore, the proceedings be dropped, and the attachment removed. Apparently this application was not contested on behalf of the opposite party Mangu with the result that the proceedings were ordered to be dropped and the attachment was removed. On 10-2-1959 an application was moved on behalf of Mangu that as the proceedings had been dropped, the various portions of the land, possession whereof had been taken by the receiver in pursuance of the order of the Court attaching the same be ordered to be returned to the parties and the status quo ante be restored.

The Magistrate passed an order accordingly and the effect of this order is that Mangu has been put back in possession of the land whereof he was in possession before the present dispute arose. It is this order which has given rise to the present reference. The petitioner preferred a revision against it to the learned Sessions Judge who has made this reference. The view of the learned Judge is that the order of the Magistrate was illegal, as he had no jurisdiction to pass it after, the proceedings had been dropped by him. It is also observed by the learned Sessions Judge that the Sub-Divisional Magistrate should not have passed the order which he did without hearing the petitioner. That objection is, however, of no importance now as both parties were fully heard by the learned Sessions Judge. The learned Judge has placed his reliance on *Kishan Sahai v. State*, AIR 1952 Raj 101 in support of his reference.

3. The question which thus emerges for determination is whether the Magistrate had jurisdiction to pass the order which he did after the proceedings had been dropped by him as stated above.

4. Let me first refer to the decision of a learned single Judge of this Court in AIR 1952 Raj 101 on which the referring Judge seems to have relied. What was held in this case was that when the proceedings under Section 145 were dropped, the Magistrate had absolutely no power to make an order that the property be returned

to a particular party even though such party may have been in possession of the disputed land at the time the attachment was ordered. The ratio of this decision is that once the Magistrate has ordered the dropping of these proceedings, he becomes functus officio, and if he then directs possession to be restored to a party that would amount to deciding the question of possession which the Magistrate had no jurisdiction to do after he had dropped the proceedings. Reliance was placed in coming to this conclusion on *Dashrath v. Tarachand*, AIR 1925 Nag 297 and *Narasayya v. Venkiah*, AIR 1925 Mad 1252. Reference may next be made to another case decided by another single Judge of this Court, namely, *Ram Sukh v. State*, ILR (1953) 3 Raj 270.

In the last-mentioned case it was held that where the Magistrate drops the proceedings under Section 145(5) and removes the attachment, then it would be open to the Magistrate to put the parties to the status quo ante provided there is clear material on the file of the Magistrate to show that the land was attached from the possession of a certain party. Where there is no clear record to show this, then the only order which can be passed is that the property shall be released from attachment.

It may be pointed out, however, that this was a case in which the Magistrate had passed his order restoring the status quo on the very day on which he had dropped the proceedings and removed the attachment. The question was, however, posed as to what the Magistrate should do with the attached property and the profits if any which might have accrued within the duration of the period of attachment, and it was pointed out that there were two views (1) that the property attached by the court should be restored to the party from whose possession it was taken and (2) that it should be kept in attachment by the court till the matter in dispute between the parties is decided by the civil court.

After considering a number of authorities, it was then held relying on *Jam Bhambo Khan v. Makhdum Muhammad Hassan Shah*, AIR 1942 Sind 117 and *Rajdeo Singh v. Emperor*, AIR 1948 All 425 that the Magistrate had power to direct the disputed property to be restored to the party from whose possession it was taken provided that it was, clear from the record of the proceedings that it was so

taken from his possession. It is not clear however whether according to the learned Judge this view would or should be confined to that class of cases where the proceedings were dropped and the order of possession was passed simultaneously or an order restoring the status quo ante could be passed even after the order dropping the proceedings had been passed.

The feature which distinguishes the present case from the cases referred to above is that the order of restoration of possession in the present case was passed subsequently to the order by which the Magistrate dropped the proceedings and removed the order of attachment. The interesting question of law which thus emerges for consideration in the present case is whether it was open to the Magistrate to have passed the order which he did within a reasonable time of the order of dropping the proceedings and removal of the attachment having been passed. I have given the matter my very careful and anxious consideration and am inclined to come to the conclusion that he has the authority to pass, such an order depending of course on the facts and circumstances of the particular case.

5. Now I should like to point out here that only two cases taking the one line of view were brought to the notice of Sharma J. in Kishan Sahai's case, AIR 1952 Raj 101 and it is remarkable that one of these cases namely AIR 1925 Nag 297, which was a ruling of a learned single Judge was overruled by a Bench decision of the same Court in State v. Sheoratan Singh, AIR 1951 Nag 201. It was held in this case that where the fundamental condition necessary to found jurisdiction under Section 145(1) was absent, the Magistrate must act under Sub-section (5) and cancel the preliminary order, and it was further held that in such a case there would be nothing wrong if the Magistrate cancelling the preliminary order cancels the order of attachment as well, and that it was but right that when the jurisdiction to act under this section is found wanting, the Magistrate should restore the status quo ante by directing the delivery of the property to the party from whom it was attached.

It was further observed, however, that this might not be possible in each and every case because of the difficulty in determining from whom the property was attached. I may at once point out, however, that, that is not a matter which affects

the, jurisdiction of a Magistrate to pass such an incidental order but a matter on the merits which is bound to depend on the facts and circumstances of each case. It was also observed in this case that where it is not possible to determine the status quo ante the appropriate order for the Magistrate to pass is to retain the property in the custody of the court and direct the parties to have recourse to a civil court to obtain possession, of the property.

With all respect, so far as this observation is concerned, it does not seem to me to be free from difficulty because this virtually amounts to an order under Section 146 Cr. P. C. which on the premises in such a case, the court is not competent to pass for the simple reason that there is no dispute whatsoever within the meaning of Section 145 Cr. P. C. To my mind, the proper order to pass in such a case should be merely to lift the attachment and leave the parties to their proper remedy in the civil court.

The position, so far as the Nagpur High Court was concerned is, therefore clear that the view that once the Magistrate had dropped the proceedings and removed the attachment he was functus officio and therefore he could not thereafter pass any order restoring the status quo ante to the parties (provided that there was material on the record to do so) was not the prevailing view in that High Court when Sharma J. decided Kishan Sahai's case, AIR 1952 Raj 101 on which the learned Sessions Judge has relied, and that Dashrath's case, AIR 1925 Nag 297 stood over-ruled.

6. I may also point out here that the other case relied on by Sharma J. also does not represent the latest trend of authority in the Madras High Court. In Velur Devasthanam v. Sambandamurthi, AIR 1952 Mad 531, Ramaswami J. held that it was the settled law so far as the Madras High Court was concerned that the Magistrate had jurisdiction to pass further orders in a case for winding up the proceedings, started under Section 145 Cr. P. C. in cases where the Magistrate dropped the proceedings, and that the Magistrate was not functus officio to pass such orders, and reliance was placed on two decisions of the Madras High Court in Suryanarayana v. Ankinced Prasad, ILR 47 Mad 713: (AIR 1924 Mad 795) and AIR 1925 Mad 1252. The learned Judge took the same view in Nagi Reddy v.

Venkatappa, AIR 1953 Mad 436.

7. Again in *Hanmantha v. Hanifabi*, AIR 1953 Hyd 185, it was held that ordinarily where the Magistrate comes to a conclusion that there was no likelihood of a breach of the peace and he drops the proceedings, any further order passed by him in connection with the question of possession would be beyond his jurisdiction. But it was pointed out that there were certain cases where in spite of the Magistrate holding that there was no likelihood of a breach of the peace, he still has got to pass an order regarding possession in the interests of justice.

It was observed that such a case would arise where owing to an emergency the Magistrate had directed that the possession of the property should be taken over by the police or by the Court and later it was found that there was no likelihood of a breach of the peace and it was further observed that in such cases the Magistrate should make restitution of possession to the person from whom possession was taken by the police or by the court.

8. Reference may also be made in this connection to *Ramlal v. State*, AIR 1955 All 46. It was observed in this case that it was the consistent view of the Allahabad High Court that where the Magistrate comes to a finding that there was no apprehension of a breach of the peace he has no jurisdiction to decide the further question as to which party was in possession of the disputed property, but if it appeared from the material on the record that the property had been attached by the police from the possession of a particular party, it was open to the Magistrate to pass an incidental order that the attached property should be released in his favour and the status quo ante should be restored; but, if, on the other hand, the material on the record was not sufficient to show from whose possession the property was attached or who was in possession of it on the date of the attachment, the Magistrate having found that there was no apprehension of a breach of the peace would have no power to decide the question of possession. AIR 1951 Nag 201 was cited with approval in this case so far as the power of the Magistrate to pass an incidental order in winding up the proceedings under Section 145 Cr. P. C. was concerned.

9. From the aforesaid review of case law, the entire position may be summed up somewhat as follows:

Whenever it is made to appear to a Magistrate or he comes to that conclusion suo motu that there never was any likelihood or there is no further likelihood of a breach of the peace relating to a dispute as respects land or other immovable property within the meaning of Sub-section (1) of Section 145 Cr. P. C., the Magistrate cannot but drop the proceedings under Sub-section (5) of that section. He must of necessity remove the order of attachment in such a case which may have been passed by him earlier under Sub-section 4. The overwhelming trend of authority in the various High Courts seems to be that it is open to the Magistrate while dropping the proceedings and removing the attachment in such cases to make an incidental order to restore possession to the party or parties from whom it had been taken at the time of attachment, and the Magistrate cannot possibly be said to be functus officio when he passes any such orders.

As respects the question whether the Magistrate can pass such an order subsequent to the date of his having dropped the proceedings, it seems to me that once it is accepted that the Magistrate has the authority to pass all incidental orders when he drops the proceedings under Sub-section (5) of Section 145 there can hardly be any objection in principle to his passing such an order subsequent to the order by which he drops the proceedings within a reasonable time of his having done so. The view that the Magistrate having passed the order under Sub-section (5) becomes functus officio is correct in the sense that thereafter he can have no authority to decide the question of actual possession on the merits and after having gone minutely into the evidence produced by either of the parties to the case, the simple reason being that if he is permitted to do so, he would thereby be exercising jurisdiction under Sub-section (1) of which by his own order he has divested himself.

But it would be a mistake in my humble judgment to think (and there is authority for that proposition as already stated above) that he is functus officio even to make such incidental orders as he is in the very nature of things required to pass so that no party might be put to any prejudice on account of the order of the court itself. In

other words, the Magistrate can restore the party to possession from whom possession was taken at the time of attachment provided there is clear material on the record to show that, Where, however, there is no such material, the Magistrate must rest content with the passing of an order removing the attachment and leave the parties to seek their remedy in a proper court of law.

The view taken in some of the cases that even in such a case it would be open to the Magistrate to keep the immovable property or its profits under the custody of the Court appears to me to be open to serious doubt, as this would be tantamount to making an order of attachment under Section 146 even though the Magistrate has come to the conclusion that he has no jurisdiction to take cognizance of the case under Sub-section (1) of Section 145. I hold accordingly.

10. Bearing the aforesaid principles in mind, let us now see how they apply to the present case. It is obvious from the facts already stated that the Magistrate dropped the proceedings by his order dated the 6th February, 1959, and it was by a subsequent order dated 19-2-1959, that he ordered that certain portions of land be handed over to the petitioner Ramlal and certain other portions to the opposite party Mangu and thereby he intended to restore the status quo ante. On the view which I have felt persuaded to accept, the Magistrate was competent to pass such an order provided of course there was material on the record justifying him to do so, not only by the same order by which he dropped the proceedings and removed the attachment but by a subsequent order made within a reasonably short time of the earlier order.

It cannot be said by any show of reason that the order of the Magistrate dated 19-2-1959, was so far removed from the order by which the Magistrate dropped the proceedings that such an order could be attacked on the ground that it was passed after undue delay. In my view, therefore the Magistrate had the jurisdiction to pass the order subject of course to the paramount consideration that there was material on the record to show who was in possession of which part of the land at the time the preliminary order was passed or the attachment was made. As already stated above, this proceeding was started on a report of the Station House Officer Khetri. This report is dated 17-7-1956.

It is clear from a perusal of this report that Mangu opposite party was in cultivatory possession of 23 bighas out of the total of 30 bighas of the land in dispute and the petitioner Ramlal was in similar possession of seven bighas only. This report also shows that Mangu was in similar possession according to the entries made in the Girdawari of the last preceding year. There was also the report of the Land Revenue Inspector from which the Magistrate came to the conclusion as to who was in possession of which part of the land at the time the attachment was made and the receiver was asked to take over possession. It is correct that the receiver did not make a detailed report as to which portion of the land was taken possession of by him from which of the parties.

That, however, docs not matter so long as there was other material on the record on which the Magistrate could have come to a definite conclusion as regards the respective possession of the parties with respect to the various portions of the land at the time the proceedings were started and the attachment was ordered. It also appears from the record that Mangu has actually been put in possession of the land released from attachment on the footing of his aforesaid possession. In this state of affairs, I am not prepared to hold that there was no material on this record which should have enabled the Magistrate to come to the conclusion to which he did.

11. For the reasons mentioned above, I hold that the Magistrate had the jurisdiction to order the restoration of status quo ante between the parties to this case, and, further, that such restoration having been ordered and given effect to, there appears to be no sound reason why it should be interfered with at this stage of the case. It is hardly necessary for me to add that the dispute between the parties really centers round the title, and it is open to the aggrieved party to have it properly adjudicated upon in a competent court of law. In this view of the matter, this reference fails and is hereby rejected.