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Court : Rajasthan

Decided On : Oct-15-1957

Reported in : AIR1958Raj180; 1958CriLJ970

Judge : K.L. Bapna and; D.M. Bhandari, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107 and 117

Appeal No. : Criminal Ref. No. 76 of 1956

Appellant : Sheokaran

Respondent : Dulla and ors.

Advocate for Def. : P.N. Dutt, Adv.

Advocate for Pet/Ap. : B.C. Chatterjee, Adv.

Judgement :

K.L. Bapna, J.

1. This is a reference by the learned Single Judge of this Court. One Sheokaran filed a complaint before the Sub-Divisional Magistrate, Nawalgarh on the 20th June 1956 on the allegations that in village Kirodi there was a Kothi known as Sadanwali which had two Dhanas, the western Dhana being used to irrigate 30 bighas kham of which the complainant enjoyed 7 1/2 bighas and that in Khasra

No. 2929, he was in possession of half the land. It was alleged that the opposite parties Duladas son of Lakhadas Lachmandas son of Bodu and Surja son of Lakhadas had prevailed upon the Patwari to make wrong entries in the Gasht Girdawari. It was alleged that the complainant was nevertheless in possession of the land of which the opposite parties were trying to wrest from him and there was danger of the breach of the peace. Notice was issued under Section 112, Criminal P. C. to show cause why the opposite parties may not furnish security for keeping the peace. As it happened, the Magistrate went on the spot and made certain enquiries from the complainant as also the Patwari and came to the conclusion that the complaint was in respect of Khasra No. 2229 which according to certain Tehsil orders had been held to be of Lachmandas and that the complainant had nothing to do with that land. He also came to the conclusion that there was no danger of the breach of the peace as the complainant himself denied having any concern with that plot of land. He accordingly dropped the proceedings and further directed the complainant not to disturb the possession of the opposite parties. This order was dated the 11th July 1956.

2. The complainant filed a revision and urged that the Magistrate should not have dropped the proceedings without taking all the evidence which the complainant might have liked to produce and further in any case he should not have directed the complainant to have no concern with the land. The learned Sessions Judge was of opinion that the Magistrate had jurisdiction to drop the proceedings when he was satisfied that there was no apprehension of the breach of the peace but he was of opinion that the Magistrate was not justified in prohibiting the complainant from having nothing to do with the land unless he could get an order in his favour from a competent Court. The learned Sessions Judge accordingly made a reference to this Court for amending the order of the trial Court.

3. On the question whether a Magistrate had jurisdiction to drop the proceedings started under Section 107, Criminal P. C., when he is of opinion that there is no apprehension of the danger of the breach of the peace, there was a conflict of opinion in this Court. It was decided by Sharma J., in the case of *Tejaram v. Bhairon*, 1955 Raj L W 532 (A) that the Magistrate is bound to take all evidence and cannot drop the proceedings without completing the enquiry. In an unreported

decision *Ram Kumar v. Phulla* Cri. Ref. No. 12 of 1955, D/- 6-12-1955 (Raj) (B), Ranawat J., was of opinion that the Magistrate had jurisdiction to drop the proceedings if he felt that there was no apprehension of the breach of the peace. The present reference having come before Sharma J., he has referred the case for an authoritative decision by a Division Bench. In our opinion the view taken by Ranawat J., in *Ram Kumar's* case (B) is correct. Section 117, Criminal P. C., which relates to the enquiry after the order under Section 112 has been read or explained, directs that 'the Magistrate shall proceed to enquire into the truth of the information upon which action has been taken and to take such further evidence as may be necessary.' But it does not lay down that all the evidence that may be sought to be produced must be recorded by the Magistrate. If, therefore, the Magistrate can come to the truth at an earlier stage, he has jurisdiction to drop the proceedings. Cases are not infrequent where proceedings are started under Section 107, Criminal P. C., but the facts which give rise to such apprehension pass away by lapse of time or happening of other circumstances. In such case when the Magistrate definitely comes to the conclusion that there is no apprehension of the breach of the peace, it would be fruitless to continue any enquiry. Of course, if the Magistrate exercises his discretion in an arbitrary manner and chooses to close the evidence of one or the other party his order would be open to correction. In the present case, it is not suggested that any apprehension of the breach of the peace remained after the Magistrate had found out certain facts from the complainant and the Patwari. In these circumstances the Magistrate was justified in dropping the proceedings under Section 107, Criminal P. C. The second part of his order directing the complainant not to interfere with the possession of the opposite parties until he obtains an order from a competent Court, is without jurisdiction, once he had decided to drop the proceedings under Section 107, Criminal P. C. While the first part of the order of the Magistrate dropping the proceedings under Section 107, Criminal P. C., is maintained the second part of the order giving certain directions, is set aside.

4. The reference is allowed as above.