

Ramesh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-02-1990

Reported in : 1990(2)WLN43

Judge : M.B. Sharma, J.

Appeal No. : S.B. Cr. Revision Petition No. 1 of 1990

Appellant : Ramesh and ors.

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

M.B. Sharma, J.

1. The main and important question in this revision petition which is directed against the order dated 14th Sept, 1989 of the learned Sub-Divisional Magistrate, Hindaun, is as, to whether in proceedings Under Section 147 Cr. PC any interim order can'be made?

2. Mewasi and others filed) an application Under Section 145 Cr. PC in the court of learned SDM, Hindaun where in it was stated that in village Dhandhawali there is a public pond in Khasra No. 893, present No. 1002 measuring two hactrea and since time immemorial the catties of the village were drinking water from the pond The

non-petitioners (petitioner complainants) wanted to cultivate their fields from that pond and wanted to obstruct the cattle from drinking water. In safeguarding the pond, the petitioner wanted to make a wall around that pond. It was stated that in case the non-petitioners (petitioner here in) were successful in taking possession of the pond then the cattle of the village will be deprived of taking water and may die. It was also stated that there was apprehension of breach of peace. On the said complaint, the learned SDM mentioning that he was satisfied from the contents of the complaint, ordered that it be registered. He also ordered as under:

vr% bLrxklk ntZ gks uksfVI xSj jk[kyku dks tkjh fd;k tkos fd os xzke Fks/kkoyh ds rkykc [k-u- 1002 udck 2 gsDVj 8 ,oj es xzke ls eos'kh dks ikuh fiykus ls ugh jksds A bl vkns'k ls dskbZ vkifRr gks rks og fnukad 21&8&89 dks U;k;ky; es mifLFkr gksdj tckc izLrqr djs A

3. The contention of learned Counsel is that the, aforesaid interim order made by the learned SDM was without jurisdiction and Under Section 147 Cr. PC only a final order after making an enquiry as necessary could be made. The learned Counsel for the non-petitioners in reply has contended that there is no prohibition to make an interim order and that apart referring to Section 465 Cr PC the learned Counsel contends that unless there is a failure of justice and unless failure of justice has been occasioned by an order, the interim order cannot be set aside and should not be set aside He contends that the interim order rather than causing failure of justice, or occasioning failure of justice has infact served the cause of justice in as much as it is ordered that if till the case is decided the cattle of the village shall not be prevented from drink water.

4. It is well settled that the action taken Under Section 147 Cr. PC is of an emergency nature. This court in the case of Manak Chand v. State of Rajasthan 1968 RLW 300, has said that Section 147 Cr. PC. relates to dispute pertaining to right of user of immovable property and empower the Magistrate to pass temporary order unless the right of the parties are decided by the civil courts. The learned Counsel placed reliance on the case of Krishna Das Agarwal and another v. Deen Dayal Agarwal 1975 Cr. LJ 127, a ruling of the Patna High Court where in the court has said that there is no provision in Section 147 for any interim

prohibitory order restraining the rightful owner from exercising his rights of ownership and possession. This Section does not contemplate that any order of restraint upon the rightful owner be passed before the right of user set up by another person is duly established at the inquiry. It appears that in that case the dispute was with regard to the right- of user of land in the shape of a free passage of light and AIR which is not beyond the purview of Section 147 Cr. PC. The court also said that the provision does not empower of making any interim prohibitory order restraining the rightful owner from exercising his rights of ownership and possession. A look at Section 147 Cr.PC is necessary and a perusal of that Section will show that it only deals with the right of user of any land or water and when ever the Magistrate is satisfied from the report of a Police of Offier or upon other information, that a dispute likely to cause a breach of peace exist regarding any such right within his local jurisdiction, whether such right be claimed as an assessment or other-wise, he shall make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his court in person or by pleader on a specified date and time and to put in written statements of their respective claims. The procedure for an inquiry Under Section 147 Cr.PC. is contained in sub-sees (2) and (3) of that Section . Under Sub-section (2) of Section 147 Cr. PC the Magistrate is required to peruse the statements so put in, by the parties Under Section ub-Section (1) of Section 147 Cr. PC, hear the parties, receive all such evidence as may be produced by them respectively; consider the effect of such evidence, take such further evidence and if possible decide whether such right exists, in an inquiry Under Section 147 Cr. PC a provision of Section 145 Cr. PC so far as may be applied. If it appears to the Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right Therefore, there can be no dispute that a final order could only be made after an inquiry is made as aforesaid. But the question again is as to whether any interim order can be made or not?

5. There is no expressed provision so far as making an interim order is concerned. The provisions of Section 146 Cr. PC cannot be attracted and subject of dispute cannot be attached. This is the position of law which in my opinion, such is beyond challenge. The purpose of inquiry Section 147, Cr.PC as said earlier is to make a summary inquiry including the rights of the parties so far as right of user of land or

water as aforesaid is concerned. In the case of *Hitalal Mahton v. Bhikhari Mahton and Ors.* : AIR1952 Pat251 , it has been said that a proceeding Section 147 is a quasi civil proceeding It is common knowledge that proceedings Section 146 as well-as 145 Cr.PC. take sufficient time, though the proviso were made for, expedient disposal of the dispute mentioned therein. A question arose before the Supreme Court whether in a proceeding Under Section 125 Cr. PC which relate to the grant of maintenance to the persons mentioned therein, interim order can be made or not? The Supreme Court in the case of *Savitriv. Govind Singh* 1986 Cr. LJ 41 examined the purpose of Chapter IX Cr PC said that in the absence of any express prohibition it is the duty of the court to interpret the provisions in Chap. IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. The court also said in in para 4 that a reading of the above provisions shows that they are intended to provide for a preventive remedy for securing payment of maintenance which can be granted quickly and in deserving cases with effect from the date of the application itself. The court also said that the civil court have inherent power to grant interim maintenance, pending disposal of the suit from maintenance. The court further said that every court must be deemed to possess by necessary intendent all such powers, as are necessary to make its orders effective. This principle is embodies in the maxim '*ubi aliquid concaditur, et id sine quo res ipse csse non potest* (where any thing is conceded, there is conceded alto any thing without which the thing itself cannot exist). When ever any thing is required to be done by law and it is found impossible to do that thing unless'something not authorised in express terms be also done than that some thing else will be supplied by necessary intendment. Such Construction though it may not always be admissibe in the present case how ever could advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. Thus, even, if there is no express provision but there is no express prohibition, the nature of the inquiry Under Section 145 Cr. PC being quasi civil proceeding in my opinion, in the facts of the case that court will have inherent, powers to make an interim order. In the instant case it appears that the non-petitioner had come out with a case that from time immemorial cattle of the village were drinking water from the pond and till the rights of the user would have

been taken decided and as said earlier it might have taken time if the learned Magistrate would not have made the interim order prohibiting the petitioner from interfere in the cattle from drinking water, in my opinion serious consequences might have flowed. Therefore, as stated earlier, in my opinion, I do not find any illegality in the order passed by the Magstrate.

6. Consequently, I here by dismiss the revision petition. The learned Executive Magistrate is directed to expediate the inquiry and dispose of the matter as soon as possible but in no case later than three months.

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