

Anoop Singh Vs. Cheloo and anr.

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Court : Rajasthan

Decided On : Nov-12-1956

Reported in : AIR1957Raj382; 1957CriLJ1455

Judge : Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 90, 145(4) and 145(9)

Appeal No. : Criminal Ref. No. 80 of 1956

Appellant : Anoop Singh

Respondent : Cheloo and anr.

Disposition : Reference accepted

Judgement :
ORDER

Sharma, J.

1. This is a reference by the learned District Magistrate, Jhunjhunu under Section 145 Cr. P. C.
2. Parties have not appeared. I have gone through the judgment of both the lower courts as well as the record of the case and the explanation of the learned Magistrate. The learned Magistrate did not issue warrant against the witnesses

Ganesh Singh and Roopji of the applicant Anoop Singh, The applicant summoned the two witnesses Ganesh Singh and Roop Singh through court and when they did not appear, he applied that they should be brought to court by warrant. The learned Magistrate says in his explanation that there is no provision in Section 145 (4), Cr. P. C. requiring the magistrate to summon witness at the instance of the parties who are unable to bring the witnesses to court. True Section 145 (4), Cr. P. C. does not say so, but under Section 145 (9), Cr. P. C, the magistrate has been given a discretion at any stage of the proceedings under Section 145, Cr. P. C. on the application of either party to issue a summons to any witness directing him to attend or to produce any document or thing.

Such summonses were issued to Ganesh Singh and Roop Singh, but they did not appear. Under Section 90 of the Code of Criminal Procedure, therefore, the Magistrate could issue a warrant for the arrest of these two witnesses after recording his reasons in writing. Learned Magistrate is, therefore, wrong in saying that he had no power under Section 145. Cr. P. C. to issue warrants against these two witnesses of course, it was at the discretion of the learned Magistrate to issue a warrant or not but the discretion ought to have been judicially and not arbitrarily exercised. Learned Magistrate ought to have seen if these two witnesses were necessary in the case and if they were not present in pursuance of the summonses, he should not have hesitated to issue warrants against them.

3. As the applicant says that these two witnesses were necessary for proving his possession, certainly a prejudice was caused to the applicant by the non-examination of these witnesses.

4. Reference is accepted. The order of the learned Sub Divisional Magistrate dated 22-6-1956, declaring Party No. 1 to be entitled to possession of the land in dispute is set aside and the case is sent back to him for decision after recording the statements of these two witnesses either by issuing summonses or by issuing warrants whichever is considered proper in the circumstances of the case.