

Ram Prasad and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-16-1983

Reported in : 1983WLN430

Judge : S.S. Vyas, J.

Appeal No. : S.B. Criminal Revision No. 81/1983

Appellant : Ram Prasad and ors.

Respondent : State of Rajasthan and ors.

Judgement :

S.S. Vyas, J.

1. This is a revision against an order of the learned Additional Session Judge (1). Hanumangarh dated March 1, 1983 passed in a proceeding under Section 145 of the Code of Criminal Procedure.

2. Briefly stated the relevant facts giving rise to this revision petition are that the officer-in-charge, Police Station, Tibi submitted a report in writing Before the Sub-Divisional Magistrate, Hanumangarh on December 8, 1982 Stating therein that a dispute likely to cause a breach of the peace existed between Chiranjilal & Rameshkumar on the one hand (here in after referred to as Party No. 1) and Ramprasad, Shiv Bhagwan and Ganesharam on the other hand (for brevity as

Party No. 2) in respect of situate in Railway Station locality of village fibi. It was further stated that the dispute had taken a grave shape so much so that and serious incident might take place. It was therefore prayed that a proceeding under Section 145, Cr. P.C. be initiated. The learned Magistrate felt satisfied from the aforesaid report of the Police that a dispute likely to cause a breach of the peace existed. He there upon drew up an order on the same day under Sub-section (I) of Sections 145 Cr. P.C. and issued notices to the parties. Simultaneously he passed an order for the attachment of the shop in dispute and appointed the Tehsildar as a receiver. In pursuance to it, the Tehsildar took possession of the shop on 9.12.82. Party No. J went in revision before the Additional Sessions Judge (I), Hanumangarh against the order of the learned Magistrate and contended that it was bad in law and did not fulfill the requirements of Sub-section (1) of Section 145, Cr. P.C. The learned Additional Session Judge accepted the contention of party No. I and set aside the impugned order of the learned Magistrate dated December 8, 1982. He held that the order drawn by the Magistrate, was not in conformity with the provisions of Sub-section (1). Aggrieved against the said order party No. 2 has come up in revision before this Court.

3. I have heard the earned Counsel for the parties and perused the record of the court below carefully.

4. It was stenuously contended by the earned Counsel for party No. 2 that the learned Additional Sessions Judge committed a grave error in holding that the order of the learned Magistrate did not fulfill the requirements of Sub-section (1) of Section 145, Cr. P.C. It was argued that the order of the learned Magistrate was in conformity of the provisions of Sub-section (1) and did not suffer from any infirmity. Reliance was placed on Ram Avtar v. Dhanroj 1977 F.L.W 47, In reply, the earned Counsel for party No. J supported the order of the learned Additional Sessions Judge. Inter alia it was submitted that in case, the order of the learned Additional Sessions Judge was held not valid, the case should be sent back to him to decide the remaining contentions, which they raised before him and were left undecided by him. I have taken the respective contentions into consideration.

5. Needless to say, that when an Executive Magistrate wants to take preventive action under Section 145, Cr. PC. he should draw an order under Sub-section (1) commonly known as preliminary order. Such a preliminary order must contain the particulars that the Magistrate was satisfied as to the existence of a dispute likely to cause a breach of peace, the grounds of his satisfaction and a direction requiring the parties concerned to attend his Court on a date fixed by him and but in written statements of their claims in respect of the fact of actual possession of the subject of dispute. That is all which is required for a Magistrate to proceed under Section 145, Cr. PC The law does not prescribe that such a preliminary order should be in any particular form. It is the substance of the order, which matters and not the manner in which it has been drawn upon. Where there is a preliminary order fulfilling the above requirements, it does not become bad in law, simply because it has not been happily worded. It would be proper here to reproduce the order of the learned Magistrate:

vkt ;g bLrxklk ,ih-ih- ISds.M guqekux< ,l ,p vks Vhoh dh vksj ls fo:) vijk/khx.k
jes'kdqekj oxSjk vUrZxr /kkjk 145 lh vkj ih lh is'k fd;k x;k A

la{ksi es okd;kr bl izdkj gS fd ekStk Vhoh xzke es jsyos LVs'ku ij iDdh IM+d ds
fdukjs ,d nqdku iDdh ftlds nks [k.M+ gS o nqdku ds vkxs cjenk cuk gqv k gS Abl
nqdku dh ckcr ikVhZ ua-1 jes'k dqekj o fpjathyky o ikVhZ ua-2 jkeizlkn ds e/; nqdku
ds dCtk ds IECU/k es cgqr T;knk ruko gS A jes'k dqekj o fpjathyky dk dguk gS fd ;g
nqdku gekjh gS A vkSj jkeizlkn dk c;ku gS fd ;g nqdku esjh gS Abl nqdku ij igys
ikVhZ ua- 1 dk dCtk Fkk ftl ij jkeizlkn }kjk fnukad 5&12&82 dks tcjnLrh NqM+kdj
dCtk dj fy;k o nqdku dk leku ckgj Qsd fn;k o viuk rkyk yxk fn;k A exj vkt fQj jes'k
dqekj o fpjath yky }kjk nqdku ds rkys rksM+ dj viuk leku okfil nqdku es j[k fy;k A
fnukad 5&12&82 dks jkeizlkn o mlds yM+dks }kjk dCtk djus ij Fkkuk es eqdnek ua-
199 lu~ 82 /kkjk 394] 452] 228] 427@34 vkbZ ih lh ntZ gqv k A tks tSj rQ+rh'k gS A
,l ,p vks dk ;g Hkh dFku gS fd bl nqdku ds dCtk dh ckcr nksuks ikf VZ;ks es bruk
vf/kd ruko gS fd dRy tSlh okjnr gksu dh iwjh iwjh IEHkkouk g SA vkSj fdLh Hkh
izdkj dh ?kVuk ?kfVr gks ldrh g SA bl fcUnq dks ysdj dLck Vhoh es Hkh ruko gS
A,l ,p vks us viuh fjiks ZV es ;g Hkh fuosnu gS fd bl nqdku dks ;fn rRdky dqdZ ugh
fd;k x;k rks 'kkfUr O;oLFkk dsk Hkkjh [krjk gks ldrk gS A

izfrosnu ,l ,p vks dk voyksdu fd;k x;k A uDy ,Q vkbZ vkj 199@82 dk Hkh voyksdu fd;k x;k ,l ,p vks izfrosnu ,oa gkykr dks ns[krs gq, ;g izrhr gksrk gS Afd mDr nqdku ds dCtk ds laca/k es nksuks ikVhZ;ks ds chp bruk mxz fookn gS fd dHkh Hkh 'kkfUr Hkax gks ldrh gS Abruk gh ugh ekStk Vhoh xkWo es blh nqdku dks ysdj nks ikVhZ;kW cu pqdh gS ftles dHkh Hkh naxk Qlkn gksdj 'kkfUr O;OkLFkk dks Hkkjh [krjk gks ldrk gS A vr% izkFkfed vkns'k tkjh fd;k tkdj rglhynkj jktLo Vhoh dks fjlhoj fu;qDr fd;k tkrk gS A mHk;lk{kks dks uksfVI tkjh fd;s tk;s A fd os fooknxzLr nqdku ds dCtk ds laca/k es tks Hkh tcuh ,oa nLrkosth 'kgknr j[krs gks bl U;k;ky; es fnukad 20&12&82 dks izLrqr djs A vkns'k dh ,d izfr fooknxzLr nqdku pLik dh tkos A fjlhoj dks vkns'k Hkstk tkos fd on oDr fookfnr nqdku dk dCtk rRdky izklr dj vuqikyuk izfrosnu izLrqr djs A vkns'k lquk;k x;k A fnu 8&12&82

g- mi [k.Mn.Muk;d guqkeux< A

6. This order shows that the learned Magistrate was satisfied from the police report that the dispute likely to cause a breach of the peace existed in respect of a shop. The use of the word [^]izkFkfed vkns'k^{**} clearly indicates that a preliminary order was drawn up by him. He issued notices to the parties to submit their oral and documentary evidence before him on 20.12.1982. In my opinion, this order, thus, fulfilled all the basic requirements of Sub-section (1).

7. It is true that simultaneously, the learned Magistrate also issued an order of attachment but that is not illegal. The order of attachment was passed after a preliminary order was drawn up A similar situation-arose in Ram Avatar's case (supra). It was observed:

The object of a preliminary order is to give all persons concerned in the dispute notice that the Sub-Divisional Magistrate is taking action under Section '145, Cr. PC to prevent a breach of peace and to give them an opportunity to adduce any proof of their respective claims so that the Sub Divisional Magistrate may be able to decide which of the parties was in possession of the subject of dispute at the date of the preliminary order or within two months next before it.

8. It may be mentioned that in pursuance to the notices issued by the learned Sub-Divisional Magistrate, Party No. 1 put appearance before him and submitted their

claims, stating therein that the shop in dispute was in their actual physical possession. The object of the preliminary order was, thus, fulfilled as soon as Party No. 1 appeared before the learned Sub-Divisional Magistrate. I am, therefore, unable to agree with the learned Additional Sessions Judge that a preliminary order drawn by the learned Magistrate was invalid and bad in law. As a consequence, I hold that the order passed by the learned Sub-Divisional Magistrate on 8.12.82 was a perfect legal preliminary order. This is nothing to vitiate it.

9. But the matter does not end here. A perusal of the record shows that party No 1 raised a number of objections against the order of the learned Magistrate dated December 3, 1982. The contentions were that the preliminary order was drawn on insufficient grounds and the order of attachment of the shop in dispute was unjustified and uncalled for. The dispute between the parties was not bonafide, but made up concoction of party No. 2. It was submitted that party No. 2 filed a civil suit against party No. 1 in respect of the shop in dispute and that suit was dismissed. Party No. 2 went in appeal and the same was also dismissed recently on 13.9.82. It was only after the dismissal of the appeal, party No. 2 raised a dispute about its possession. The dispute was thus not bonafide or reasonable. All these questions were raised before the learned Additional Sessions Judge, but were left undecided by him. It was, therefore, urged that the case may be sent back to the learned Additional Judge (1), Hanumangarh for decision on all these contentions.

10. There is considerable force in the contention. The learned Additional Sessions Judge did not decide all the contentions raised before him in the revision petition. He confined himself only to see whether the preliminary order was correctly drawn or not. Since, he left some contentions of Party No. 1 undecided the ends of justice require that the revision be sent back to him for decision on all the contentions of Party No. 1

11. In the result I hold that the preliminary order drawn by the learned Sub-Divisional Magistrate, Hanumangarh on December 8, 1982 is perfectly legal. The order of the learned Additional Sessions Judge (1) Hanumangarh dated March

1.1983 is consequently set aside. The revision is sent back to him with directions to decide the remaining contentions of party No. 1, i.e. Chairanjilal and Rameshwar. The parties are directed to put appearance before him on August 25, 1983.

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