

Ghulam Rasool Dar and ors. Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Feb-11-1985

Reported in : 1985CriLJ1091

Judge : M.L. Bhat and; S.M. Rizvi, JJ.

Appellant : Ghulam Rasool Dar and ors.

Respondent : State and ors.

Judgement :

M.L. Bhat, J.

1. These two revision petitions came up for consideration before a Single Judge of this Court Anand J. (as his Lordship then was). His Lordship referred the matter to the Division Bench to consider:

1. Can the revisional power of the High Court under Section 435 Cr. P.C. be controlled by the nature of the property involved in the proceedings under Section 145 Cr. P.C.?

2. Whether such a classification is not hit by Article 14 of the Constitution of India?

3. Whether the powers of the High Court under Section 439 Cr. P.C. can be controlled by Section 435(4) Cr. P.C?

The aforesaid questions were of considerable importance. Therefore an authoritative pronouncement of a larger bench was required to be given.

2. The two revision petitions arise out of the proceedings under Section 145 Cr. P.C. decided by Executive Magistrates. The land in dispute was covered by the provisions of Agrarian Reforms Act, therefore Executive Magistrates alone had jurisdiction to initiate the proceedings about the dispute under Section 145 Cr. P.C. and decide the same. This exclusively vesting of jurisdiction in respect of land as defined in the Agrarian Reforms Act, in the Executive Magistrates was by operation of law.

3. Section 435(4) was brought to the notice of the Hon'ble ACJ by Mr, S. T. Hussain for the proposition that in respect of lands as defined in the Agrarian Reforms Act, revisional jurisdiction of the High Court is taken away by the said Sub-section of Section 435 Cr. P.C,

It may be profitable to reproduce Section 435(4) Cr. P.C. for proper appreciation of the controversy:

High Court may call for and examine the record of any proceeding under Sees. 118, 122, 143 or 144 notwithstanding the fact that such proceeding was before an Executive Magistrate.

Because Section 145 was omitted in the aforesaid sub-section, therefore a contention was raised that High Court had not jurisdiction to hear revision in respect of orders passed by Executive Magistrates under Section 145 Cr. P.C. The other side had contended before the Single Judge that High Court's jurisdiction to hear the revisions against the orders of Executive Magistrates under Section 145 Cr. P.C. was intact by virtue of Section 439 Cr. P.C. It was also contended that Section 439 Cr. P.C. was a controlling section. A further contention raised was that if the jurisdiction of the High Court to exercise its revisional jurisdiction would depend on the nature of the property, that would be discriminatory and violative of Article 14 of the Constitution of India.

4. Mr. S. T. Hussain is for the ouster of the jurisdiction of the High Court and he has relied on Sub-section (4) of Section 435 Cr. P.C. which is reproduced hereinabove and M/s. K. N. Raina and R. N. Kaul are controverting this position.

5. We have heard learned Counsel for the parties in detail.

6. The scope of the reference is limited one. Therefore Mr. S. T. Hussain's contention to consider other questions beyond the scope of the reference cannot be upheld. He has contended that orders under Section 145 Cr. P.C. are in the nature of police orders and as such revision against such orders would not be maintainable even if said orders are passed by Judicial Magistrate. According to him final orders passed under Section 145 Cr. P.C. have a limited import as it decides the question of possession alone and are subject to the decision of a civil Court. The aggrieved party can approach the civil Court. Revisional jurisdiction of the High Court as such cannot be invoked. Though this question does not arise directly in this case, but we would like to say something on this aspect of the case also a little later.

7. Criminal Procedure Code by virtue of Section 6 categorises classes of criminal Courts. It says that besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of criminal Courts in the Jammu and Kashmir State, which are:

I. Courts of Session.

II. Courts of Magistrates

Section 6-A classifies the Magistrate in two categories; one the category of Judicial Magistrates; and, other the category of Executive Magistrates. Among the category of Judicial Magistrates, the Chief Judicial Magistrate is placed as head of such Magistrate and among the Executive Magistrates, the District Magistrate is the head of such Magistrates.

8. By virtue of Separation of Powers Act, Judicial Magistrates, powers to hear cases came to be defined and certain cases were exclusively triable by Executive Magistrates. This happened when separation of Judiciary from Executive took

place by operation of law in 1966. Disputes under Section 145 were to be determined by Judicial Magistrates in respect of properties mentioned in Section 145 Cr. P.C. However with the advent of Agrarian Reforms Act disputes regarding the lands as defined in the said Act would be decided only by Executive Magistrates. Disputes regarding other properties, which was not covered by the Agrarian Reforms Act could be decided only by the Judicial Magistrates. Therefore the nature of the properties would determine the jurisdiction of Judicial Magistrates and Executive Magistrates to take cognizance about disputes of immoveable property under Section 145 Cr. P.C. The cognizance of the disputes under Section 145 Cr. P.C. by respective Courts i.e. Courts of Judicial Magistrates and the Executive Magistrates would entirely depend on the nature of the property. Nature of the property was determinative for conferring jurisdiction on two classes of Magistrates in respect of disputes under Section 145 Cr. P.C. The procedure for determining the controversy by the two classes of Magistrates under Section 145 Cr. P.C. remains the same. Only two forums were constituted to hold enquiry and decide the matters under Section 145 Cr. P.C. in respect of two classes of properties, one governed by the Agrarian Reforms Act and the other outside the ambit of the said Act. In both the cases proceedings were of original nature. The object of conferring jurisdiction of Executive Magistrates in respect of lands as defined in the Agrarian Reforms Act was to get disputes quickly determined so as to implement the Agrarian Reforms Act within the time bound programme. Provisions of Agrarian Reforms Act had a scheme of its own which was framed to abolish intermediaries and confer benefits on the tenants of the land in actual possession. There was a scheme of vesting of land in the State first, then in the prospective owners who were in actual physical possession as tenants in Kharief 1971. The welfare legislation was meant to abolish the landlordism and to achieve certain objects given in the Act. This discussion is necessary to understand the proposition as to why on the basis of nature of property, jurisdiction was divided between two classes of Courts to take cognizance of disputes under Section 145 Cr. P.C.

9. In this background scope of Section 435 Cr. P.C. requires to be examined Sub-section (1) of Section 435 reads as under:

(1) The High court or any Sessions Judge or Chief Judicial Magistrate may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Courts/and may when calling for such record, direct that the execution of any such sentence (or order) be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

On reading this sub-sec., power of High Court to call for records of inferior criminal Courts within its jurisdiction for purposes of satisfying itself as to the correctness, legality or propriety of and finding, sentence or order, record or passed and as to the regularity of any proceedings of such inferior criminal Court remained intact. Inferior criminal Court are mentioned in Section 17-B of the Criminal Procedure Code. Courts of Sessions and Courts of Judicial and Executive Magistrates are Courts inferior to the High Court. So for purpose of Sub-section (1) of Section 435 High Court is vested with power to call for record of inferior Courts which includes a Court of Executive Magistrate and pass necessary orders. However, the difficulty of Mr. S. T. Hussain is that since Sub-section (4) of Section 435 omits to mention Section 145 Cr. P.C., therefore by implication it should be construed that High Court's jurisdiction to call for the records of Executive Magistrates in proceedings under Section 145 Cr. P.C. is ousted. Because of this omission, the present two revisions are said to be not maintainable as the orders passed in these two revisions are passed by the Executive Magistrates.

10. We have given our thoughtful consideration to the rival contentions of the learned Counsel for the parties. Section 435(1) is a controlling sub-section and it certainly vests power to hear revisions, in the High Court in respect of orders passed by inferior criminal Courts, which include Courts of Executive Magistrates also. Sub-section (4) of this Section omits to make mention of orders passed under Section 145 Cr. P.C. That in our opinion does not present any difficulty. Sub-section (4) of Section 435 Cr. P.C. does not in our opinion restrict the powers of High Court to entertain revisions against orders passed by Executive

Magistrates in proceedings under Section 145 Cr. P.C. It, on the other hand, enlarges the powers of High Court to hear revisions in respect of orders passed under various sees., such as 118 122,143 and 144 Cr.P.C. Omission of Section 145 Cr. P.C., therefore from Sub-section (4) will not affect the jurisdiction of the High Court to hear the revisions in respect of those proceedings because Sub-section (1) of Section 435 positively vests that power in the High Court. If the interpretation of Mr. S. T. Hussain is accepted then Sub-section (1) of Section 435 is rendered nugatory and meaningless. Sub-section (1) and Sub-section (4) of Section 435 have to be harmoniously constructed. The construction should aim at making the two sub-sections workable and meaningful. These two sub-sections are independent of each other though Sub-section (1) being key to the intendment expressed by the Legislature as regards powers of High Court.

11. Ouster of jurisdiction of High Court to entertain revisions against the orders of Executive Magistrates passed under Section 145 Cr, P.C. is not to be presumed because no such ouster is expressed by the Statute. Exclusion of jurisdiction is not to be implied. It must be express. Though in certain cases it is by implication also. Sub-section (1) of Section 435 expressly vests jurisdiction in the High Court to entertain the present revisions. By implication Sub-section (4) could not take it away. If harmonious construction is placed on two sub-sections, one is constrained to say that Sub-section (4) is meant to enlarge the revisional jurisdiction of the High Court as regards orders passed in certain proceedings specified in the said sub-section. The two sub-sections, therefore, are necessarily to be harmoniously interpreted and jurisdiction given expressly is not to be presumed to be ousted impliedly. Mr. S. T. Hussain's submissions make the two sub-sections inconsistent with each other and mutually contradictory.

12. The nature of the property would not determine the revisional jurisdiction of the High Court. It may determine jurisdiction in original proceedings, but High Court's power of revision would not be dependent on the nature of property. Original jurisdiction to determine disputes by the two classes of Magistrates could depend on nature of property, but legality and propriety of said orders could be determined by the High Court under its revisional jurisdiction and the said power will not be fettered because the disputes under Section 145 are determined by two different

forums. Admittedly against Judicial Magistrates power of revision is available to the High Court. If this power of revision is ousted on the basis of nature of property, that would be discriminatory and violative of Article 14. Revisional powers of High Court can never be said to be dependent on the nature of the property. Therefore, it is to be held that revisional power of the High Court cannot be presumed to be ousted and is not ousted because orders are passed by Executive Magistrates in respect of properties which are governed by the Agrarian Reforms Act.

13. Our answer to the first question is, therefore, in negative and we hold that the revisional powers of the High Court under Section 435 cannot be controlled by the nature of the property involved in the proceedings under Section 145 Cr. P.C.

14. As regards second question our answer will be in the affirmative because if revisional jurisdiction of the High Court is made dependent on the nature of the property involved in proceedings under Section 145 Cr. P.C. the classification will be hit by Article 14 of the Constitution of India and will be discriminatory.

15. We need not consider the effect of controlling provisions of Section 439 Cr. P.C. because we are of the opinion that revisional powers of the High Court to hear revisions against the orders of Executive Magistrates passed in proceedings under Section 145 are intact and have not been ousted either expressly or by implication.

16. Mr. Tassaduque Hussain's argument as regards complete ouster of jurisdiction of the High Court to entertain revisions against orders passed in Section 145 proceedings is devoid offered.

17. Dr. Lallubhai Dayararn v. Karimbhai : AIR1958 Bom276 relied upon by Mr. Tassaduque Hussain is an authority for the proposition that revisions should not be directly brought to the High Court against the orders passed under Section 145 proceedings before first approaching the appropriate forums. This authority does not support the contention of Mr. S. T. Hussain which we are considering after answering the reference Bhinka v. Charan Singh : 1959 CriLJ1223 is not an authority for the proposition that revision against the orders passed under Section

145 Cr. P.C. would not lie to the High Court. It only says that order under Section 145(6) decides possession and not title. This proposition of law is not in controversy. *Brajnandan Sinha v. Jyoti Narain* : 1956 CriLJ156 has dealt with Section 3 of the Contempt of Courts Act while discussing the status of a Commissioner appointed under Act No. 37 of 1850. It was held that such Commissioner is not a Court. Therefore a violation of his order could not be brought under the purview of Section 3 of the Contempt of Courts Act of 1952. The contention of Mr. S. T. Hussain is therefore misconceived and is hereby rejected.

18. The reference is answered accordingly. The two revision petitions shall be placed before any available single bench of hearing on merits.

S.M. Rizvi, J.

19. I agree.

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