
(2004) 10 AHC CK 0049

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 5686 of 1992

Jai Prakash Sharma

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Oct. 7, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 145(1), 145(8), 146, 482

Citation: (2005) 1 ACR 390

Hon'ble Judges: Amar Saran, J

Bench: Single Bench

Advocate: Murlidhar, Pradeep Kumar, Madhusudan Dixit, Sudhir Solanki and M.C. Gupta, for the Appellant; N.C. Rajvanshi and M.P. Rajvanshi and Vinay Kumar Mishra, A.G.A., for the Respondent

Judgement

Amar Saran, J.

Heard Sri Madhusudan Dixit, learned Counsel for the applicant and Sri M. P. Rajvanshi, learned Counsel for opposite party Nos. 2 and 3.

2. This application has been filed for quashing a preliminary order u/s 145(1), Cr. P.C., dated 1.9.1990 and the order dated 1.9.1990, passed u/s 145(8), Cr. P.C. attaching the said property and issuing certain incidental directions as well as the orders dated 29.4.1992, passed by the VI Ith Additional Sessions Judge, Muzaffarnagar, dismissing Criminal Revision Nos. 153 and 154 of 1991 filed against the aforesaid orders.

3. The contention of the learned Counsel for the applicant is that in a wholly mala fide manner the proceedings u/s 145(1), Cr. P.C. have been initiated and the property in dispute attached thereafter.

4. The learned Counsel for the applicant has taken me through the application dated 18.8.1990, which was given by the supporters of Shiv Sena to the S.D.M., Kairana. This

application states that in the bus-stand, Jhinjana, there is a Bhumiya Kheda temple, which is in a dilapidated condition and regarding which several complaints have been made to the administration. But the administration has not come forward with any solution. This temple has 25 shops whose income is being illegally realised by the applicant Jai Prakash Sharma for the last 30 years. The older parts of the temple, and the remaining property of the temple has been demolished and shops have been constructed, which have been let out on rent. The Shiv Sena, Jhinjana, has been issuing warnings to the administration for the last 8 months, and now if by 30.8.1990, the temple and the shops are either not handed over to Shiv Sena or to the manager of the temple, one Satya Prakash, then on 1.9.1990, about 1500 Shiv Sainiks from Block Un and Jhinjana would forcibly take possession of the temple and its property and hoist their flag there and thereafter they would forcibly realise rent from the shopkeepers. The administration would be held responsible for the ensuing turmoil.

5. Apparently, to circumvent this undue threat from the Shiv Sainiks, and succumbing to their wholly extra-legal pressure the S.D.M., Kairana, passed the preliminary order on 1.9.1990 u/s 145(1), and on the same date he passed the impugned order u/s 145(8), Cr. P.C., by which order he observed that as there was an apprehension of breach of peace, in exercise of powers u/s 145(8) he was attaching 27 shops and the surrounding enclosed area and handing over the disputed property to the Station Officer, Jhinjana, with a direction that the station officer would realise the monthly rent from the shops etc. and deposit the same in the Court.

6. Learned Counsel for the applicant submits that it is the own case of the Shiv Sena and the applicant was in possession of the shops for the last 30 years and was realising the rent from the shops, which according to the Shiv Sena functionaries was illegal and the rent could only be realised by the Shiv Sena or the temple pujari Satya Prakash. The Shiv Sena talked of forcibly taking possession of the temple. The application on behalf of the Shiv Sena mentions that Shiv Sainiks would forcibly take possession of the temple and hoist their flag there. There was no claim even by the Shiv Sainiks about existing possession over the temple, but the application dated 18.8.1990 only proclaimed their intention to take possession of the temple property and the shops. No Section 145 or 146, Cr. P.C. proceedings could have been initiated in these circumstances.

7. The learned Counsel for the applicant further pointed out that even the police report by the S.O., P.S. Jhinjana, dated 1.5.1990, shows that the property in question, Khasra No. 1203, plot No. 562 stood in the name of Pt. Prayag Dutta Sharma, which had 27 shops and other rooms. The applicant was looking after the shops being the grandson of the owner, Pt. Prayag Dutta. The applicant had also got a society, named and styled as Pt. Prayag Dutta Shivalaya Samiti, Jhinjana registered under the Societies Registration Act. The applicant claimed to be realising rent from the shops in the temple precincts, and to be looking after the temple property and paying municipal taxes in that regard. Kuldip and Ors. on behalf of the Shiv Sena were contending that the temple was public property which came under their authority and that they would realise rent from the shops in the

future, although the S.O., Jhinjana, had counselled initiating Section 145, Cr. P.C. proceedings because of an impending threat to peace.

8. Learned Counsel for opposite party Nos. 2 and 3, however, submits that from times immemorial this property was temple property which belonged to the ancestors of opposite party Nos. 2 and 3.

9. There is absolutely no material or evidence to support the claim of opposite party Nos. 2 and 3. Also, admittedly, the property was in possession of the applicant and simply because one group of persons decides to create a law and order problem and has announced its intention to take forcible possession of a property in future on a particular date by hoisting their flag there and by declaring their intention to realise rent forcibly from the shop keepers cannot provide any justification for initiating proceedings u/s 145 and 145(8), Cr. P.C. Proceedings under Sections 145 and 146, Cr. P.C. are to be initiated when two parties are claiming actual existing possession over a certain property and not when one party states that the other party is wrongfully in possession of the disputed property for 30 years, but henceforth this complaining party would take possession over the property. Section 145, Cr. P.C. proceedings are only to be initiated when there is a dispute "as respects the fact of actual possession of the subject of dispute". It would be violative of all principles of law and justice if the property would be allowed to be taken out of the hands of the legal occupant and handed over to strangers to satisfy unlawful claims of certain persons who are resorting to threat and intimidation. In such circumstances it was incumbent on the Magistrate to stand up before such illegal threats by one party who were threatening to forcibly take possession over a property, and to protect the occupant in possession of the property, if there was no dispute of the actual possession over a property at the material time, and not to succumb to the threats of a party proclaiming their intention to take the law into its hands, by meekly surrendering to the threats and taking the easy course of issuing orders under Sections 145(1) and 145(8), Cr. P.C. and attaching the property depriving the existing occupant of the property his right to enjoy the property. The course adopted by the Magistrate has resulted in a complete failure of justice.

10. Furthermore, the learned Counsel for the applicant submits that Section 145(8), Cr. P.C., has wrongly been mentioned in the order dated 1.9.1990 as that provision deals with powers of the Magistrate for disposal of perishable property subject to speedy and natural decay whereas the impugned order purportedly u/s 145(8), Cr. P.C. was really an order u/s 146, Cr. P.C., attaching the property. This contention of the learned Counsel is also correct.

11. Two revisions, it appears, have been dismissed against the orders under Sections 145(1) and 145(8), Cr. P.C., principally on the ground that no revisions lay against these interlocutory orders. As there has been a gross abuse of the process of law and failure of justice by initiating the proceedings and issuing the impugned orders u/s 145(1) and 145(8), Cr. P.C. in the facts of this case, there is no fetter on the powers of this Court to

pass appropriate orders in exercise of its inherent powers u/s 482, Cr. P.C.

12. In this view of the matter, this application is allowed and the orders dated 1.9.1990 u/s 145(1) and purportedly u/s 145(8) passed by the S.D.M., Kairana, and the orders dated 29.4.1992, passed in Crl. Revision Nos. 153 of 1991 and 154 of 1991 by the VI lth Additional Sessions Judge, Muzaffarnagar, are all set aside.

13. It is further directed that the applicant would be permitted to withdraw the rent realised from the shopkeepers which may have been collected by the Station Officer, Jhinja and deposited in the Court of the S.D.M., Kairana, in pursuance of his order dated 1.9.1990 u/s 145(8), Cr. P.C.