Chandi Prasad and Others Vs Om Prakash Kanodia and Others

Court: Allahabad High Court

Date of Decision: July 25, 1975

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 145, 146, 482

Citation: (1975) AWC 558 : (1976) CriLJ 209

Hon'ble Judges: H.N. Kapoor, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

H.N. Kapoor, J.
This petition has been filed u/s 482, Cr.P.C. for quashing the proceedings before the Sub-Divisional Magistrate,

Naugarh, district Basti u/s 145, Cr.P.C. A dispute arose in respect of the premises in which a school was being run in Baruni Bazar in the name of

Amar Bal Vidya Mandir. It was being run since 1971 in the aforesaid name by the managing committee comprising of the present applicants

including the pradhan of the village, namely, Chandi Prasad. The applicants claimed that the school building was constructed on banjar land

belonging to the Gram Sabha. The applicants were described as the second party. The first party consisted of Balmukund Giri (now dead), Om

Prakash Kanodia and Haripati Tripathi. They are now the opposite parties. They claimed that the building was constructed on the land belonging

to Balmukund Giri which he had obtained on a patta thirty years back and that Balmukund Giri himself had started the school in the year 1971 and

had appointed the first party as its managing body to run the school.

But he felt dissatisfied and in 1974 he appointed another managing committee to run the school by means of a registered deed. That managing

committee consisted of the persons who are opposite parties Nos. 1 and 2 in this petition besides Balmukund Giri himself. The name of the school

too was changed into Adharshya Amar Bal Vidya Mandir. It appears that both the parties started running parallel schools and the police reported

that there was an apprehension of the breach of the peace. The learned Magistrate then passed the preliminary order dated 22-7-1974 and started

proceedings u/s 145, Cr.P.C.

Subsequently another station officer of Police Station Dhebarwa submitted another report dated 3-11-1974 to the effect that there was no longer

any apprehension of breach of the peace. However, a third report was submitted by the station officer, police station Dhebarwa dated 2-12-1974

to the effect that there was an apprehension of breach of the peace and the case was of grave emergency. A copy of that report has not been filed

by any of the parties. On the basis of that report, the Sub-Divisional Magistrate, Naugarh ordered attachment of the school building on 4th of

December, 197.4 considering the case as of grave emergency. However, even after passing this order, the learned Magistrate proceeded with the

case u/s 145, Cr.P.C. with a view to pass the final order under that section. The petitioners have filed this petition for quashing those proceedings.

2. Sri G. P, Mathur, learned Counsel for the petitioners has argued that after the order of attachment was passed by the learned Magistrate u/s

146(1) Cr.P.C. (New), he had no jurisdiction to continue with the proceedings under S. 145 Cr.P.C. According to him, attachment was to

continue until the rights of the parties were determined by a competent court exercising civil jurisdiction. He has conceded that it was open to the

Magistrate to make an enquiry only for the purpose of finding out whether apprehension of breach of the peace still existed or not as the

Magistrate could withdraw attachment at any time under the proviso to Sub-section (1) of Section 146, Cr.P.C. (New).

He has also argued that the proceedings u/s 145, Cr.P.C. were illegal from the very beginning and no attachment should have been made as the

dispute was only with regard to the administration of the school which cannot be considered to be a dispute within the meaning of Section 145,

Cr.P.C. as was held in the case of Onkar Nath Tiwari v. Ram Anjore Misra (1973 Cri LJ 1885) (All). So far as the last argument is concerned, it

may be observed that in the present case there is a dispute about the possession and ownership of the building itself as it was claimed to be his

building by Balmukund Giri, who is now dead. He claimed it to be his private property and formed a trust by a registered deed appointing the

opposite parties 1 and 2 as members of the managing committee. On the other hand the petitioners claimed1 that the school building was

constructed on a banjar land by the former managing committee and that it was not the personal property of Balmukund Giri. The dispute does

appear to be of civil nature which will have to be decided by a civil court.

3. In the present case, I ""shall, therefore, confine myself to the effect of the attachment order passed u/s 146(1) Cr.P.C. (New). Section 146(1)

Cr.P.C. x{New) reads as follows:

146 (1)Ã¯Â¿Â½If the Magistrate at any time after making the order under sub-s. (1) or Section 145 considers the case to be one of emergency, or if he

decides that none of the parties was then in such possession as is referred to in S. 145, or if he is unable to satisfy himself as to which of them was

then in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the

parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the

peace with regard to the subject of dispute.

learned Counsel for the petitioners has argued that on the plain reading of this section the property which has been attached u/s 146(1) Cr.P.C.

can be released only after the rights of the parties have been determined by a competent court and the Magistrate had no power to proceed further

u/s 145, Cr.P.C. except for the purpose of finding out whether there was still an apprehension of breach of the peace.

Sri V. S. Jauhari, learned Counsel for the opposite parties has argued that since! the attachment was on the ground of emergency, it was open to

the learned Magistrate to proceed further u/s 145, Cr.P.C. According to him, it would have been a different matter if the attachment was on any of

the other two grounds, that is, the Magistrate decided that none of the parties was then in such possession as referred to in Section 145, Cr.P.C.

or if he was unable to satisfy himself as to which of them was then in such possession of the subject of dispute. In that case he has conceded that

attachment could have continued till the dispute was finally decided by some civil court, revenue court or such other competent court, I see no

reason for drawing such distinction. The last clause, ""he may attach...to the possession thereof obviously governs all the three clauses including the

clause when the attachment is made for emergency. learned Counsel for the opposite parties has referred to the case of MGMT Marwari Primary

Vidyalaya v. S. D. M. Deoria (1975 All LR 235). He has laid great stress on the following observation made by Bakshi, J. in that case:

Reading Sections 145(1) and 146(1), Cr.P.C. together the inference is obvious that both these sections empower the Magistrate to pass an interim

order, during the continuance of the proceedings u/s 145(1), Cr. P. C, or prior to the passing of the final order; if he considers the case of

emergency.

His argument is that such an order on the ground of emergency can be passed during the continuance of the proceedings u/s 145(1) Cr.P.C. which

obviously means that the proceedings u/s 145(1) Cri. P.C. are to continue. I do not agree with this contention. No doubt, the order of attachment

on the ground of emergency can be passed at any stage during the continuance of the proceedings u/s 145(1) Cr.P.C. but it has nowhere been

held by the learned Judge that the proceedings u/s 145(1) Cr.P.C. are still to continue after such an order of attachment is passed.

4. Sri Kazmi, learned Counsel for the State has raised another argument which was adopted, by Sri Jauhari also. According to him, the words

competent court"" occurring in Section 146(1) Cr.P.C. would include the court of the Magistrate also which was seized of the case u/s 145,

Cr.P.C. and which could determine the rights of the parties with regard to the person entitled to the possession thereof. According to him there is

thus no bar in the case of the Magistrate to continue the proceedings u/s 145, Cr.P.C. and pass the final order even after the property has been

attached on the ground of emergency.

According to him, this can be the only way of reconciling the provisions of Section 145 (4) Code of Criminal Procedure, 1898 with the provisions

of Section 146(1) Cr.P.C. (New). He has laid great stress on the fact that u/s 146 (1) Code of Criminal Procedure of 1898 the word ""civil court

was used and not ""competent court"". His contention is that if this interpretation is not given to the words ""competent court"" appearing in Section

146(1) all other provisions of Section 145, Cr.P.C. will become redundant after the Magistrate passes the order of attachment immediately after

passing the preliminary order u/s 145(1), Cr.P.C.

5. We have to interpret the law as it stands. There is no provision for attachment u/s 145, Cr.P.C. under the new Code similar to the provision of

attachment u/s 145 (4) Cr.P.C. (Old). It is not necessary for a Magistrate to pass an order of attachment in every case. He can then proceed u/s

145, Cr.P.C. and pass the final order. But as soon as he passes the order of attachment, consequences are to follow as provided u/s 146(1),

Cr.P.C. (New). The word ""Magistrate"" has been clearly used as something different than ""a competent court. Rights about possession are decided

by revenue courts and consolidation courts apart from civil courts. In other States there may be courts known by different names. It is for this

reason that the words ""competent court"" have been used instead of the words ""civil court"" which can determine the rights of the parties with regard

to the person entitled to the possession. It follows that it must be with regard to the possession generally.

A Magistrate u/s 145, Cr.P.C. adjudicates about possession for a limited purpose only and confines himself to the question of possession at the

time of the passing of the preliminary order or two months prior to the date on which the report of the police officer or other information was

received by the Magistrate. In my opinion, there is no escape from the conclusion that after the Magistrate has attached the property, the

attachment has to be continued until the rights of the parties are determined by a competent court of civil jurisdiction which can decide the title of

the parties. The Magistrate can withdraw the attachment only when at any time he is satisfied that there is no longer any likelihood of breach of the

peace with regard to the subject of dispute.

6. In the result the petition is allowed. The order of the learned Magistrate dated 23-4-1975 (Annexure 5) is quashed and he is directed not to

proceed further with the case u/s 145, Cr.P.C. except for the purpose of making an enquiry on the point whether there is no longer any likelihood

of breach of the peace with regard to the subject of dispute. Only in case he is satisfied that there is no longer any likelihood of breach of the peace

with regard to the subject of dispute, he can withdraw the attachment and drop the proceedings.