

Ganga Ram & Others Vs State of U.P.& Others

Court: Allahabad High Court

Date of Decision: Dec. 18, 2008

Hon'ble Judges: A.K.Roopanwal, J

Final Decision: Disposed Of

Judgement

A.K. Roopanwal, J.

This writ petition has been filed against the orders dated 19.9.2007 and 1.12.2008 passed by the courts below.

I have heard Mr. V. K. Pandey, holding brief of Mr. K. K. Pandey, learned counsel for the petitioners, learned AGA for the State and perused

the record.

It appears from the record that in the proceedings u/s 145 Cr.P.C. an application u/s 145(5) Cr.P.C. was moved by the petitioners saying that no

such dispute as mentioned in the notice u/s 145(1) Cr.P.C. existed on the date of the application and therefore, the proceedings were liable to be

dropped. That application was rejected by the Magistrate concerned vide order dated 19.9.2007 by giving an opportunity of hearing to the

petitioners. This order was challenged in the revision and the revisional court vide order dated 1.12.2008 endorsed the order of the Executive

Magistrate.

It has been argued by Mr. Pandey that as the apprehension of breach of peace is a sinequanon for initiating the proceedings u/s 145 Cr.P.C.,

hence the Magistrate should have decided the same and when he decided the same, he decided in the wrong way.

I feel that for the decision of this writ petition it is not at all required to go into the merits of the orders impugned here. It is because of the fact that

there is still an ample opportunity to the petitioners to put their say in the proceedings u/s 145 Cr.P.C. and that opportunity being available, there is

no propriety to entertain the writ petition.

The writ petition is disposed of with the direction that the Magistrate concerned shall consider the factum of presence of apprehension of breach of

peace at the time of final decision of the proceedings u/s 145 Cr.P.C. without being influenced by its previous order dated 19.9.2007. It is also

expected that the Magistrate shall conclude the proceedings within a period of sixty days from the date of production of a certified copy of this

order.