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Manager, Bharat Refractories Ltd. Vs Dr. Sandar Son Dkhar

Criminal Revision No. 3 (SH) of 1984/86 of 1984

Court: Gauhati High Court (Shillong Bench)

Date of Decision: Dec. 8, 1989

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

Citation: (1990) 2 GLR 29

Hon'ble Judges: S.K. Hom Choudhury, J

Bench: Single Bench

Advocate: H. Ahmed, for the Appellant; S.C. Das, for the Respondent

Final Decision: Allowed

Judgement

S.K. Homchaudhuri, J.
This revision petition is directed against the order dated 23.2 84 passed by the learned District Megistrate West

Khasi Hills, Nongstoin C.T. Case No. 2 of 1982 Under Section. 145 Code of Criminal Procedure In the aforesaid proceedings the Secretary

Nongstoin Mining Co-operative Society Limited, a co-operative society formed under the provisions of Meghalaya Co-operative Act, is the first

party and the Manager, M/s Bharat Refractories Limited, a Govt. of India undertaking, is the second party the second party M/s Bharat

Refractories Ltd. have been engaged in aillimanite raining operation in an area of 363 hectares of land in the Nongstoin District with due licence

from the competent authority aad is a lease in respect of the said area for a period of 20 years to be expired in 1992. The first party, namely,

Nongstoin Mining Co-operative Society Ltd, also a lessee in respect of other area of the land of the said district and engaged in silliminite mining

operation. The boundaries of the lease hold land are demarcated.

2. According to the Petitioner, although there was no boundary dispute between the second party and first party in view of the lease dated

22.2.72, however, the opp. party with an ulterior motive filed a complaint on 17.2.82 before the learned Additional District Magistrate, Nongstoin

alleging that the Petitioner encroached upon the lease hold land and mined the away about 3500 Matric Tons of Grade--E Silliminite from their

Umsohpbie mining lease No. 2. Following the complaint, a proceeding u/s 145 Code of Criminal Procedure was registered by the learned

Additional District Magistrate, Nongstoin and the same was registered as C.T. Case No. 2/82, However the learned Addll. District Magistrate by

an exparte order dated 23.2.82, while issuing notice to the Petitioner decided and declared the possession of the alleged disputed land in favour of

the first party and had forbidden disturbance of the possession In the meantime and fixed 13.3.82 for filing objection. The learned Additional

District Magistrate also attached the 3300 M.T. of Silliminite (Gr. 1) which alleged to have been mined away from the leased area of the first

party--opp. party. The Petitioner"s grievance is that neither a copy of the complaint dated 17.2.82 filed by the first party--opp. party nor a copy of

the police report was supplied to the Petitioner which has greatly prejudiced the second party. The recording of evidences of the witnesses was

started and the examination of the Mining Engineer of the Directorate of Minerals Resources having not been completed, the learned Magistrate

fixed 9.6.82 for of cross-examination of the said witness on the consent of both parties. Consequently, behind the back of the Petitioner an order

was passed to the following effect:

Seen also the prayer of the first party to take the seized mineralspon jimma. The prayer is allowed, The Officer-in-charge Nongstoin to get the

seized materials on the jimma of the first party.

That order, according to the Petitioner was uncalled for and absolute arbitrary. The Petitioner impugned the said order dated 6.5.83 in Crl.

Revision No. 1 (H)/33 in the Court of the learned Deputy Commissioner, Nongstoin. The learned Deputy Commissioner, however without

disposing of the said revision petition took up C.T. Case No. 2/82 u/s 145 Code of Criminal Procedure for hearing by transferring the same case

by order dated 25.7.83. Thereafter the learned Deputy Commissioner by the order dated 23.2.84 passed the impugned order declaring that the

opp. party-first party was in possession of the disputed land. Feeling aggrieved, the Petitioner has approached this Court in this revision petition.

3. Heard Mr. H. Ahmed, learned Counsel for the Petitioner as well as Mr. S.C. Das, learned Counsel for the opp. party. Mr. H. Ahmed has

submitted that the impugned proceedings u/s 145 Code of Criminal Procedure is totally misconceived inasmuch as there was no likelihood of

breach of peace between the Govt. of India Undertaking and the Mining Co-operative Society. The boundary was, demarcated and evidences

were led before the Court to establish that there could not be any dispute about the area of mining operation when the boundary was well

demarcated. The learned Counsel submits that the impugned order is wholly arbitrary and was passed without appreciation of evidences on

records and is without application of mind. What was the disputed land is not made known either in the order dated 23. 2. 82 or in the impugned

order.

4. Mr. S.C. Das, learned Counsel for the opp. party, however, has submitted that although the disputed area was not specified in the impugned

order, the disputed area is known to both parties and that the learned Magistrate, while exercising jurisdiction u/s 145 Code of Criminal Procedure

on appreciation of evidences being satisfied that the first party opp. party was in possession of the disputed land has rightly passed the impugned

order and there is no infirmity in drawing up proceedings u/s 145 Code of Criminal Procedure as it was based on police report.

5. I have considered the submissions of the learned Counsel for the Petitioner as well as learned Counsel for the Opp. party and have perused the

impugned orders and other materials on records. On perusal of the records, it appears that the Nongatoin Mining Co-operative Society Ltd. by an

application dtd. 17.2.82 approached the learned Deputy Commissioner West Khasi Hills, Nongstoin alleging that M/s Bharat Refractories Ltd.

started mining operation in the area of lease No. 2 of the complainant by encroaching into their area of Wahumsohphi Mining lease and that M/s

Bharat Refractories Ltd. in their illegal mining operation in the disputed area have not only taken away the materials mined by it but also taken

away the prospected silliminite of the society, which the society prospected in 1970-71. The society made a prayer in the said complaint for

immediate steps for seizing 3500 M.T. (Grade-I) silliminite left in the stockyoard of M/s Bharat Refractories Ltd. and temporary suspension of all

mining lease of M/s Bharat Refractories Ltd. till all boundaries are fixed by the Govt. In the said complaint petition there was no whisper that on the

question of boundary dispute there was likelihood of breach of peace between the parties far less serious breach of peace, However, it appears

that the learned Deputy Commissioner by order dated 17.2.82 passed on the body of the said complaint for warded the same to the

Superintendent of Police, West khasi Hills District for favour of necessary action and ordering that a case u/s 145 Code of Criminal Procedure BY

started and properties be attached u/s 146 Code of Criminal Procedure It also appears by the letter No. NSC-191/78/20 dated 17.2. 82

addressed to the S.P., West Khasi Hills, the learned Deputy Commissioner forwarded the complaint dated 17.2.82 and requested the S.P. to take

steps u/s 145 Code of Criminal Procedure The S.P. by order on the body of the said letter directed the Officer-in-charge, Nongsto in P.S. that the

land and the silliminite might be attached in the proceeding u/s 145 Cr. P.C. The Officer-in-charge, Nongstoin P.S. by endorsement on the body of

the said letter reported to the S.P. as follows:

Sir.

I have attached the disputed boundary on 19.2.82 and proceedings u/s 145 Code of Criminal Procedure has been initiated.

Thereafter, it appears that F.I.R. Case No. 2/82 Pt. I u/s 145 Code of Criminal Procedure was registered and by order dated 23.2.82 the learned

Additional District Magistrate Nongstoin made Dr. Sandar Son Dkhar as first party and Mr. H.N.S. Sing Mining Engineer of Bharat Refractories

Ltd. as second party and ordered to issue notice on them to file written statements to establish their claim of possession over the disputed land.

The police was also ordered to ascertain if any third party could be entrusted as Jimmadar for the seized articles. However, from the notice issued

pursuant to the said order it appears that although the learned Addl. District Magistrate directed the parties to file their written statement by

15.3.82, in the said notice an order declaring possession in favour of the first party in respect of the disputed land was passed.

6. Section 145 Code of Criminal Procedure is a special provision empowering the Magistrate to take steps for maintenance of public order and

tranquility. A Magistrate can exercise jurisdiction u/s 145 Code of Criminal Procedure when be is satisfied from the report of the Police Officer

and upon other information that a dispute is likely to cause breach of peace concerning land, water of boundary within its local jurisdiction. As

already observed that in the complaint petition dated 17.2.82 there (sic) no whisper even of apprehension of the breach of peace over the alleged

boundary dispute between M/s Bharat Refractories Ltd. and Nongstoin Mining Co-operative Society Ltd. There is nothing on record to show that

the learned District Magistrate received any information either from the complainant or from the police report or from any other source, that there

was likelihood of breach of peace over the alleged disputed doundaries of mining lease areas. It is clear from the records that the learned District

Magistrate without any material before him simply on receipt of the complaint dated 17.2.82, arbitrarily decided to initiate proceeding u/s 145

Code of Criminal Procedure He did not even as-ked the police to submit report on the basis of the allegation made In the complaint dated 17.2.82

and proceeded with pre-determined mind to initiate proceedings u/s 145 Code of Criminal Procedure without any materials before him. The

complaint petition also did not disclose the area or boundary of the disputed area wherein alleged illegal mining operation was made by M/s Bharat

Refractories Ltd. For drawing up a proceeding u/s 145 Code of Criminal Procedure a magistrate must have the materials before him from which

he should be satisfied that for maintenance of public order and tranquility, a proceeding u/s 145 Code of Criminal Procedure is to be initiated. But

in the instant case, it is crystal clear that without any materials before him, the learned District Magistrate had arbitrarily initiated the proceedings u/s

145 Code of Criminal Procedure As such, on perusal of the materials on records. I am constrained to hold that initiation of a proceeding u/s 145

Code of Criminal Procedure on the basis of the complaint dtd. 17.2.82 was wholly arbitrary and misconceived and the learned District Magistrate

acted illegally and without jurisdiction (sic) Initiating the proceedings u/s 145 Code of Criminal Procedure That being so, the impugned proceeding

cannot be sustained and is liable to be quashed.

7. In the result, the petition is allowed. The impugned proceedings In C.T. Case No. 2 of 1982 registered in the Court of the learned Addl District

Magistrate, Nongatolu is quashed. The impugned order dtd. 23.2.84 and other orders passed In the Impugned proceedings having became

inoperative and void are set aside.