

(1954) 05 GAU CK 0002

Gauhati High Court (Imphal Bench)

Case No: None

Gumanta Mohan Deb

APPELLANT

Vs

Abdul Karim Mia

RESPONDENT

Date of Decision: May 5, 1954

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 144, 145

Citation: (1954) CriLJ 1336

Hon'ble Judges: Brij Narain, J.C.

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Brij Narain, J.C.

1. This is a reference by the learned Sessions Judge, Tripura in which recommendation has been made for setting aside the order dated 6-5-1953 passed by the learned Magistrate, Khowai Sri A. Singh, in Criminal Misc. case No. 9 of 1953 u/s 145, Criminal P. C. directing the Receiver appointed by the Court to hand over the disputed land to the Ist party Abdul Karim Mia and also directing Abdul Karim Mia to receive the amount deposited in the Khowai Treasury as income of the disputed land under attachment proportionate to his share.

It appears from the record that Abdul Karim Mia Initiated proceedings u/s 144, Criminal P. C. against the Opposite Party No. 2 in the Court of Sri H. S. Dev Barma, the then S. D. M., Khowai on the ground that there was apprehension of breach of peace. Sri H. S. Dev Barman quashed this proceedings on 5-6-1952 on the ground that there was no apprehension of breach of peace but he started proceedings u/s 145, Criminal P. C. He did not pass any preliminary order as required by Section 145, Criminal P. C. and he did not require the parties to file their written statements but he ordered them to produce their witnesses.

Sri H. S. Dev Barma also ordered attachment of the disputed property and a Receiver was also appointed with respect to this property on 5-6-1952

Later on Sri H. S. Dev Barma was transferred and Sri A. Singh took charge as S. D. M., Khowai Sri A. Singh held that as there was no apprehension of breach of peace on 5-6-1952 no proceedings u/s 145, Criminal P. C. could legally be initiated and so he quashed the proceedings u/s 145, Criminal P. C. on 6-5-1953. He", however, proceeded to record the evidence of the parties on the question as to who was in actual possession of the land in question on 5-6-1952 and after a protracted enquiry it was held by him that the Opposite Party No. 1 was in possession and so the disputed property should be released in his favour. As already mentioned above it was further ordered that the proportionate share of the sale proceedings of the crop of this land be also given to the Opposite Party No. 1.

2. The learned Sessions Judge has referred the case to this Court and his argument is that after 6-5-1953 when Sri A. Singh quashed the proceedings u/s 145, Criminal P. C. he became functus officio and he had no jurisdiction to record the evidence on the question as to who was in possession of the disputed land on 2-5-1952 or 5-6-1952, The learned Magistrate, I think, should have released the property in favour of the party from whose possession it was attached and any of the aggrieved parties could go to the competent Civil Court for adjudication of his rights.

3. It appears from the application No. 201 dated 14-8-1952 that the Opposite Party No. 1 is a resident of Pakistan and his allegation in the application dated 2-5-1952 is that when he went to plough the land in question the Opposite Party No. 2 (the present petitioner) turned him out and he did not allow him to cultivate this land. It thus became clear that the Opposite Party No. 1 could not possibly have raised the crop in question and so the learned Magistrate should not have made any detailed enquiry after the proceedings u/s 145 before him were over. As such I am of opinion that the order passed by the learned Magistrate in this case is legally not sustainable and so it is set aside and the reference is accepted to the extent indicated above.

4. Before parting with this case, I think, I must invite the attention of the learned Sessions Judge to the fact that reference u/s 438, Criminal P. C. should contain (1) the reasons for the reference (2) the points on which orders are required (3) recommendation that the sentence be revised or altered and (4) the report of the inferior Court which is to be obtained from that Court by way of explanation of the order passed.

In re AIR 1942 38 (Nagpur) it was laid down by Hon"ble Niyogi J. of the Nagpur High Court that the omission to call for the trying Magistrate's explanation aggravates the irregularity of reference which is virtually on points of fact, and that irregularity vitiates the reference and makes it unacceptable - vide also Mailamdi Fakir v. Taripulla Pramanik 8 Cal 644 and; Surendra Nath Sen Gupta Vs. Secy. of State,

5. I think these rulings lay down the correct law on the subject as no rule or contrary ruling has been given by this Court on this subject; the mere fact that at the time when revision application is filed in the Court of the Sessions the Magistrate is called upon to submit his report will not be substantial compliance of the instructions laid down in the rulings cited above. It is the duty of the Sessions Judge to obtain a written report from the learned Magistrate after the order making a reference to this Court is passed by him in revision as the Magistrate would only then be in a position to give his comments on the order passed by him bearing in mind the objections on the basis of which his order is recommended to be quashed.