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(1965) 09 KL CK 0022

High Court Of Kerala

Case No: Criminal R.P. 469 of 1964

Kunjukuity Amma		APPELLANT
	Vs	
Raghavakurup and Others		RESPONDENT

Date of Decision: Sept. 3, 1965

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 145, 145(5)

Citation: (1965) KLJ 1055

Hon'ble Judges: P. Govinda Menon, J

Bench: Single Bench

Advocate: K. George Varghese and Thomas V. Jacob, for the Appellant; P. Kochukrishna Pillai, Joseph M. Madathil for Respondents 1 and 2 and State Prosecutor for 4th Respondent, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Govinda Menon, J.

This is an application to revise the order passed by the Executive First Class Magistrate, Adoor directing u/s 145 (5) Cr. P. C, that further proceedings in M. C. 14 of 1964 be dropped and the attached properties be restored to the persons from whose possession they were taken. On being satisfied from the report of the Sub Inspector of Police, Aranmula that a dispute likely to cause a breach of the peace existed between the A and B parties relating to possession of two buildings situated in S. No. 281/14/13 of Mallapuzhasseri Village in Pathanamthitta Taluk, the learned Magistrate on 30--9--1964 passed a preliminary order requiring the parties to attend his court and put in written statements of their respective claims as respects the fact of actual possession and further requiring them to put in documents and affidavits, if any, on which they relied in support of their claim. On receipt of the notice B-party No. 1, who is the first respondent there, came and objected to the initiation of

proceedings stating that he is in undisputed possession of the property, that the Munsiff''s court of Pathanamthitta has issued an order of injunction restraining the A-party from entering the property, that therefore no dispute exists and praying for cancellation of the preliminary order. Both parties produced documents and on a perusal of the documents and on a consideration of the facts and circumstances of the case learned Magistrate was satisfied that there was actually no occasion for a dispute between the parties as the civil court had already taken seizin of the matter and there being no likelihood of any breach of the peace cancelled the preliminary order. The petitioner who is the A-party in the case has therefore come up in revision.

2. Learned counsel for the petitioner argued that when once the Magistrate starts proceedings u/s 145 Cr P.C. by issuing a preliminary order under Sub-Section (1) of Section 145 he is bound to go on with the enquiry and complete it and decide whether one or the other of the parties is in possession on the relevant date and that he is no discretion whatsoever to drop the proceedings, that the petitioner has a right to file his statement, documents and affidavits and the Magistrate is bound to hear him and decide the matter.

3. In considering whether a Magistrate can drop proceedings at any state of the enquiry, it is well to remember that the foundation of jurisdiction for proceedings u/s 145 is the apprehension of the breach of the peace and when once the Magistrate feels that there is no continuance of this apprehension, it is open to him to drop the proceedings.

In this context, the remarks of the Full Bench of the Calcutta High Court in Manidra Chandra Nandi v Barada Kanta Choudry (I.L.R. 30 Cal. 112) may usefully be quoted.

The procedure provided by S. 145 is intended solely for the purpose of preventing a breach of the peace where a dispute exists concerning any land, or water, or the boundaries thereof which dispute, if no proceedings were taken, would be likely to cause a breach of the peace. The institution of such proceedings is a matter entirely within the discretion of the Magistrate. The existence of a dispute likely to cause a breach of the peace is a condition precedent absolutely necessary to give the Magistrate jurisdiction to enter upon an inquiry as to possession.....

It follows from this passage that as the object of the section is mainly to avoid a breach of the peace the moment the Magistrate feels that the likelihood of a breach of the peace does not exist, it is incumbent upon the Magistrate to terminate the inquiry already started and that a party is not entitled to call upon the court to give a finding on the question of possession. A criminal court acting u/s 145 Cr. P. C, is not expected to discharge the functions of a civil court, which is the proper forum for adjudicating upon the rights of the parties, either as to possession or title. Therefore, a party cannot compel a Magistrate u/s 145 to go into the question of possession irrespective of whether there is a continuance of the apprehension of a

breach of the peace or not, merely because the proceedings were initiated. A party to a proceeding u/s 145 is not in the position of a plaintiff in a civil suit who has set the court in motion and has a right to require a decision upon the question raised by him.

Another Bench of the Calcutta High Court in Abdur Rahman Bhuia and Others Vs. Dinesh Haldar and Others, following the earlier Full Bench case held that it was competent for a Magistrate u/s 145 (5) Cr. P. C, to cancel the preliminary order under Sub-Section (1) at any stage of the proceedings..

In Har Narain and Others Vs. Hoshiar Singh and Others, Beg. J., decided that the absence of danger of a breach of the peace ousts the jurisdiction of a Magistrate to continue the proceedings initiated u/s 145. So when once the Magistrate learns that there is no danger of a breach of the peace, the foundation for action u/s 145 Cr P.C. disappears and it is not competent for him to proceed further and he must immediately stay his hands.

4. The same view has been taken by the Madras High Court in a number of rulings beginning from Suryartarayana v Ankineed Prasad Bhadur (I.L.R. 47 Mad. 713) where justice Spencer following the decision of the Calcutta High Court observed that a Magistrate had power to drop proceedings at any stage. Mr. Justice Krishnan in Narasayya v Venkiah (I.L.R. 49 Mad. 232) stated that it was not open to a party to come up to the High Court and say that the Magistrate had no business to drop proceedings on the ground that there was no likelihood of a breach of the peace without giving him an opportunity to show that there was such likelihood. In the opinion of the learned Judge it was the duty of the Magistrate to be satisfied that there is no breach of the peace in his district and if he is so satisfied it is not for a private party to object.

The same view has been taken by Ramaswamy J. in Velur Devasthanam v State (1952 M. W. N. 53); and by Balakrishna Ayyar J; in In re Ivaturi Sambasiva Rao (A.I.R. 1954 Mad. 1017) and also by Chandra Reddy J. (as he then was) in Golla Kosanna v Beldari Ramaswami (1954 M. W. N.: Cr. 272).

The Mysore High Court in a recent decision in Laxmana Subrao Pattil v Smt. Bhagubhai (1964 M.L.J. Cr. 60) has also taken the same view.

5. It is unnecessary to multiply authorities. Suffice it to say that I express my respectful accord with the authorities, cited above and I hold that the Magistrate can, at any stage, drop the proceedings provided he is satisfied that no dispute exists that is likely to cause a breach of the peace. As indicated already the purpose of Section 145 Cr P.C. is to confer on Magistrates power requisite to maintain public order when disputes concerning immovable property threaten to cause a breach of the peace. I can see nothing in the section which precludes the Magistrate from dropping proceedings when he is satisfied that no breach of the peace is likely to occur. Sub-section(5) of that section provides:

Nothing in the section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute, as aforesaid exists or has existed; and in such case the file Magistrate shall cancel his said order, and all further proceedings shall be stayed but subject to such cancellation, the order of the Magistrate under sub-S. (1) shall be final.

It will be noticed that in the first part of the sub-section the words used are "that no such dispute as aforesaid exists or has existed". The expression "has existed" would relate to a point of time anterior to that on which the party seeks to satisfy the Magistrate under this sub-section. The word "exists" would relate to the time at which the party seeks to satisfy the Magistrate about the absence of a dispute. After all Section 145 proceedings are purely of a summary nature and it is only very rarely that the High Court interfere in orders made under the section; firstly because the object of such orders is to preserve peace; and secondly because the aggrieved party has always his remedy by a civil suit. I find no good grounds for interference. Revision petition is dismissed.