
Sultan Ahmed Vs Dustari Begam and Others

Criminal Revision No. 233 of 1997

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: July 24, 1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 145, 145(1), 145(5), 399

Citation: (1998) 1 MPLJ 669

Hon'ble Judges: Nirmal Kumar Jain, J

Bench: Single Bench

Advocate: M.K. Jain, for the Appellant; Iqbal Ahmed, for respondent Nos. 1, 2 and 3 and M. Soni, Panel Lawyer, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.K. Jain, J.

This revision is directed against the order dated 9-5-1997 passed by the Second Additional Sessions Judge, Ujjain in Cr. Rule 82/95 setting aside

the order of Sub-Divisional Magistrate Ujjain passed u/s 145, Criminal Procedure Code and remanding the case for hearing afresh.

The dispute relates to a house over which the applicant and the respondents 1, 2, 3, claim their respective possession. Police, Kharakuwa, Ujjain

made a complaint u/s 145, Criminal Procedure Code to the S.D.M. Ujjain that there exists dispute between the parties over the said house and

which is likely to cause breach of peace. Learned S.D.M. passed order dated 19-2-1992 directing for registration of a case u/s 145 and for

issuance of notice to the parties calling upon them to put in written statement of their respective claim as respects the fact of actual possession to

the said house. Both the parties filed their written statement. The evidence of applicant Sultan Ahmed, who was arrayed as party No. 1, was

recorded. Respondents 1, 2, 3 (Party No. 2 in the said case) instead of producing any evidence made an application under sub-section (5) of

section 145 claiming that no such dispute, as alleged, exists. They, therefore, prayed that further proceedings be stayed and the order passed under

sub-section (1) be cancelled. Learned S.D.M. not only dismissed the application but also closed respondents' right to lead evidence in the case.

Thereafter final order was passed in the case on 3/6/1995 declaring possession of the applicant herein over the house in dispute.

The respondent (No. 1) challenged the order in revision before the Additional Sessions Judge, Ujjain who vide order impugned set aside the order

and remanded the case back to the S.D.M. for deciding it afresh from the stage of passing of preliminary order u/s 145(1), Criminal Procedure

Code.

I have heard Shri M. K. Jain, counsel for the applicant, Shri Iqbal Ahmed, counsel for Respondents 1, 2, 3, and Shri M. Soni, P. L. for

Respondent 4-State.

Learned Additional Sessions Judge has set aside the order of the S.D.M. on following two grounds ;

(i) that no order under sub-section (1) of section 145 was passed by the S.D.M. and as such further proceedings taken by the S.D.M. were

without jurisdiction;

(ii) that right of the respondents 1, 2, 3, herein to lead evidence was closed without any sufficient cause.

As regards first point; it appears that the learned Magistrate did not record his satisfaction as to the existence of dispute and likelihood of breach of

peace in terms of sub-section (1) of section 145 and instead straightway made order for issuance of notices to the parties. However no objection

was taken by any party as to the defect in preliminary order passed by the S.D.M. Both the parties contested the proceedings on merits obviously

with the hope that final order will be passed in their favour. It was only when the final order was passed against the respondents that they for the

first time raised objection in revision before the A.S.J. This Court has constantly held that in such a situation, objection raised belatedly cannot be

sustained.

In State of M. P. v. Babusingh 1975 MPLJ 44 : 1974 MPLJ 114 it was held-

In proceedings u/s 145, Criminal Procedure Code a preliminary order can be passed when a Magistrate is satisfied that there is an apprehension

of breach of peace and that the apprehended breach of peace cannot be prevented unless proceedings are taken u/s 145, Criminal Procedure

Code. After the notice of preliminary order was served on both the parties neither of them took any objection to any infirmity in the said order.

Both the parties contested the proceedings on merits with a hope that the final order will be passed in their favour. When the final order was

against the party of Babusingh, grievance was made for the first time before the Court, about an infirmity, in the preliminary order. Such an

objection at the stage at which it was raised could not be maintained. If the preliminary order was bad for one reason or the other, it should have

been challenged by a separate revision petition and the party feeling aggrieved by that order should not have waited till a final order was passed

against him. Thus, the objection raised by the non-applicant Babusingh cannot be accepted. Revision dismissed.

Following the aforesaid ratio this court again in State of M. P. v. Kutaria 1977 MPWN 242 has held that-

The objection regarding defectness of the preliminary order raised for the first time in the High Court is not maintainable.

Similar view is taken in the case of Ganeshsingh 1977 MPWN 579.

It will be thus, seen that it was not open for the respondents to raise objection so belatedly for the first time in revision. The revisional court below

clearly fell into error in sustaining the objection and quashing the proceedings on that ground.

As regards the second ground, I find myself in full agreement with the learned A.S.J. that the S.D.M. ought not to have closed the respondents"

right to lead evidence and then dismiss their application u/s 145(5). The proper course would have been to consider the application first and in

case the application was to be rejected, the respondents should have been given opportunity to lead the evidence. To this extent, therefore, the

order impugned deserves to be sustained as I notice no illegality or impropriety in the finding so recorded by the revisional court below.

In the result this revision deserves to be allowed in part. I dispose of this revision with under noted directions :

(a) The impugned order dated 9-5-1997 is set aside insofar as it directed for quashing of entire proceedings of the S.D.M.

(b) The order impugned is upheld, insofar as it declares that the respondents" right to lead evidence was wrongly closed.

(c) The case shall now go back to the court of S.D.M. with the directions that it will proceed to decide the application of the respondents made u/s

145(5), Criminal Procedure Code and in case the application is dismissed, the S.D.M. shall record evidence as may be produced by the

respondents. After taking evidence of the respondents the S.D.M. shall decide the case afresh in terms of section 145(4) of Criminal Procedure

Code.

Copy of this order be remitted to the court of S.D.M. Ujjain. The parties are directed to appear before the Court of S.D.M. Ujjain on 14-8-1997.