Rajendra Kumar Vs B.S. Yadav and others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Sept. 9, 1985

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 145, 145(1)

Citation: (1986) MPLJ 196

Hon'ble Judges: V.D. Gyani, J

Bench: Single Bench

Advocate: M.L. Agrawal, for the Appellant; Surjitsingh, Govt. Advocate, for the Respondent

Judgement

V.D. Gyani, J.

By this Misc. Criminal Petition the petitioner prays for quashing the notice dated 29-6-1985 issued by respondent No. 1 under directions of the

respondent No. 2, as contained in his letter No. 149 S.D.M./85 dated 28-6-1985 thereby calling upon the petitioner to stop construction on his

land.

The petitioner''s case is that he purchased land bearing Survey No. 1166/2 situated in Katkatpura, Indore from one Jageshwar by registered sale

deed dated 7-10-1983 and has been in possession of the said land. They have also obtained necessary permission from the Authorities concerned

for construction of a building on the said land (Annexure-II). Construction was started on 5-2-1985 and till the filing of the present petition, he had

spent almost Rs. 2000.00/ -over construction.

On 29-6-1985 the petitioner had received a notice from the respondent No. 1 directing him to stop construction. The notice has been filed by the

applicant as Annexure-III. The petitioner on receipt of this notice (Annexure-III) contacted the respondents Nos. 1 and 2 and moved an

application placing all facts requested them to permit construction but in vain. Hence the present petition.

Going through the record which has been received from the Sub-Divisional Magistrate, Indore, the respondent No. 2, it is apparent that these

proceedings u/s 145(1) Criminal Procedure Code have been initiated by respondent No. 4.

Before proceeding further with the petition, it would be better to enumerate the basic essentials of section 145(1) Criminal Procedure Code. The

Section contemplates (a) a dispute (b) relating to possession of land (c) likely to cause breach of peace and on fulfilment of these conditions the

Magistrate gets jurisdiction to intervene whenever he is "satisfied" that these essential grounds or reasons for intervention exist. This jurisdiction is

though narrow and limited is well defined and strictly confined to prevention of apprehended breach of peace. The first step in such proceedings,

required to be taken, of course on fulfilment of the aforesaid conditions is to pass an order u/s 145(1) Criminal Procedure Code which in this case

was passed on 2-7-1985 by Shri Z.A. Rizave S.D.M. Indore. Prior to the passing of this order a letter No. 149/S.D.M./85 dated 28-6-1985 was

addressed to the Station Officer, P.S. Juni Indore. It reads as follows:-

.

It will be seen that this letter itself is in the nature of an order, directing the Police to file a report which is made to appear to have been filed on 1-

7-1985 although the marginal endorsement in the order sheet indicates that the aforesaid direction was issued on 2-7-1985 and the date 2 is

corrected as 1.

On 1-7-1985 the learned Sub-Divisional Magistrate has recorded:-

PRAKRAN POLITICAL LOGON KA JAN PADTA HAI. ATTAH IS SAMBANDH ME POLICE STATION JUNI INDORE SE TATKAL

REPORT MANGWA1 JAVE.

This is how the Police report is received. The order sheet does not bear any date, but the marginal endorsement shows 1-7-1985 with corrections

in the date. Now by no stretch of law can it be said to be a justifiable reason for calling the report from the Police for initiating action u/s 145(1)

Criminal Procedure Code. The basic requirements stated above have been overlooked.

The scope of exercise of powers u/s 145(1) Criminal Procedure Code is well defined and it is also well established that the Sub-Divisional

Magistrate who exercises powers u/s 145(1) Criminal Procedure Code has to act in a quasi-Judicial manner. Taking it to be an administrative

action still it has to be informed with reason and fairness not influenced by such political considerations in invoking the provisions of law. It is to be

noted with regret that the initiation of proceedings u/s 145(1) Criminal Procedure Code is itself bad in law being in utter disregard of the essential

requirements.

For the first time the parties appeared before the Sub-Divisional Magistrate on 3-7-1985 but it is significant to note that even before the parties

appeared the Sub-Divisional Magistrate in pursuance to his direction dated 1-7-1985 called for a report from the Police, as the matter appeared

to have political overtones, the report appears to have been submitted on 1-7-1985 and on the same day it is recorded in the order sheet that a

preliminary order was passed and a case was directed to be registered. Thus, it is abundantly clear that the earlier orders were passed even in

absence of a registered case before the Sub-Divisional Magistrate. By order dated 1-7-1985, the case was fixed for 3-7-1985. It is significant to

note that a cyclostyled preliminary order u/s 145(1) Criminal Procedure Code has been passed on 2nd July 1985 whereas there is no such order

sheet of 2nd of July 1985 to be found in the proceedings. The case which was fixed for 3rd July 1985 was taken up on 3rd and in between the

two order sheets there is a recital to the effect that report from police received and preliminary order passed but regrettably it does not bear any

date.

Passing of a preliminary order is the most important step in proceedings u/s 145(1) Criminal Procedure Code. The order is passed on 2-7-1985

bears the date 2-7-1985 but there is no order sheet dated 2-7-1985. It is inconceivable that a Sub-Divisional Magistrate acting in quasi-Judicial

manner, passing order u/s 145(1) Criminal Procedure Code on 2-7-1985 still not drawing an order sheet on that and of that date. The making of

an order u/s 145(1) Criminal Procedure Code pre-supposes subjective satisfaction of the Executive Magistrate about dispute relating to land,

imminent present fear of breach of peace, applying these facts to be cyclostyled proforma orders on record can it be safe to infer subjective

satisfaction on the part of the Executive Magistrate concerned, such cyclostyled proformas merely provide a skeleton without a sove. It is not that

an order has been passed in the case and thereafter stenciled for the purposes of getting the parties served. There is no original order at all either

written or typed, on record. All that is to be found is a bunch of cyclostyled orders. It is needless to say that proceedings u/s 145(1) Criminal

Procedure Code have an important role at times decisive bearing on a citizen''s rights to property and in possession.

Before taking action the Magistrate should take in the context all the particular facts before him and facts differ from case to case. There is a catena

of case law holding that section 145 is frequently misapplied and the Magistrate should be careful to see that the criminal Courts are not used by

the parties for the settlement of civil disputes or for manoeuvring for position for the purposes of subsequent civil litigation or as an easy way of

getting possession of the land in dispute without going to the Civil Court or for driving the other side to the Civil Court to prove his title. The

practice of taking to the Criminal Courts for a preliminary skirmish disputed questions of rights and title is much to be deprecated. It is also

observed that as a successful criminal proceeding offers certain advantages persons of means are not infrequently tempted to resort to this section

as a trial of a strength before civil litigation. With all these precedents, does the order in question, even remotely indicate much less assures the

subjective satisfaction, so very essential for passing an order u/s 145(1) Criminal Procedure Code. The impugned order, in the space provided for

''Vad-grast and Achal Sampati'', merely refers to plot without even specifying its location, number or area. For that matter, even the order sheets,

commencing from 28-6-1985 to 8-7-1985 (in all 5) are also silent on this crucial point, there is yet another aspect which militates against the

satisfaction of the Magistrate concerned. It is to be seen from the record that on 1-7-1985 the petitioner had not merely placed all the relevant

material facts, but also 7 documents, some of them being photostat copies of the orders passed by S.D.M. on 6-6-1983, and the A.D.J.''s order

on 25-4-1985 in Civil Suit No. 21-A/84 having a material bearing, and the permissions obtained for construction from the Corporation as well as

from the Joint Director, Town and Country Planning, there is not even a mention of these documents, leave aside consideration in the preliminary

order passed by the Magistrate on 2-7-1985. It is not a case of mere non-consideration of the material but also a case of total lack of application

of mind much less a quasi-judicial consideration of facts and material before passing the impugned order. It is to be noted that the thin line of

demarcation between judicial and quasi-judicial function is also, by now almost obliterated.

Where serious points involving rights relating to possession of property are raised, the question that arises for consideration is whether, a

mechanical reproduction in cyclostyled order can be a substitute of that ''satisfaction'' on the part of the Magistrate which section 145(1) Criminal

Procedure Code enjoins him to reach before passing such an order. What seriousness leave aside sanctity can be attached to such cyclostyled

proforma orders? This Court is constrained to observe that in the instant case the Executive Magistrate has by mere mechanical reproduction of

the language and requirement of section 145(1) Criminal Procedure Code has passed the order without any application of mind and such an order

can have no legal sanctity. The material placed by the petitioner has not been considered, there is no indication about the land in question merely

mentioning ''plots'' does not suggest anything. The initiation of proceedings in this case as has been pointed out above, is not a consideration of any

material but was the result of the political influence, as borne-out from order sheet dated 1-7-1985.

Before passing the order dated 28-6-1985 there was no material with the Sub-Divisional Magistrate to issue the order No. 149 dated 28-6-1985

which has already been reproduced above. In fact it was by this order, that a report was sought from the Police and subsequently registered on 1-

7-1985, as shown in the order-sheet which has also been discussed above and even prior to the registration of a case, prohibitory orders in the

nature of injunctions stopping construction were issued, for which there was absolutely no basis. The orders do not ex facie suggest that the

S.D.M. was acting on personal information. On the other hand what is amply established from record is that he wanted to act on political grounds

for which a report from Police was sought and on obtaining the report the case was registered. Thus there is no legal foundation for passing the

order. It would not be out of place to recall the words of Lord Salborn. A century ago (sic) v. P.S. District Board of Works (1885) 10 Appeal

Cases 229 said "there would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of

justice." The essence of justice in the instant case requires fairness in consideration of all the necessary facts in order to reach the subjective

satisfaction which cannot be done by mechanical reproduction of the provisions of law and in a cyclostyled proforma leaving the blanks to be filled

in as and when required. Such orders offend against the rudimentary principles of natural justice. Such cyclostyled proforma order offended against

the elementary principles of natural justice and it has long been settled law that a decision which offends against principles of natural justice, is

outside the jurisdiction of the decision making Authority. Violation of natural justice makes the decision void. When the letter requires consideration

of facts for reaching subjective satisfaction, such satisfaction cannot be subjected to a rigid mechanical repetition of the legal phraseology without

any application of mind and consideration of facts. Such a practice, needs to be deprecated and discouraged. The notice Annexure-III and the

order dated 2-7-1985 passed u/s 145(1) Criminal Procedure Code also stands quashed.

Before parting with the case, this Court hopes that such mechanical prepared proformas shall be avoided in passing orders involving satisfaction of

the Authorities.