

(1978) 07 CAL CK 0004

Calcutta High Court

Case No: None

Bata Krishna Manna and
Another

APPELLANT

Vs

Md. Majit Ali and Others

RESPONDENT

Date of Decision: July 7, 1978

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 146

Citation: (1978) CriLJ 1275

Hon'ble Judges: Sudhindra Mohan Guha, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sudhindra Mohan Guha, J.

A very short point namely whether the Magistrate has jurisdiction to interfere with the accounts submitted by the Receiver appointed u/s 146 of the Cr. P.C. crops up for determination in the instant revision.

2. On Nov. 28, 1975 at the instance of the 1st party/opposite parties Nos. 1 to 3 the Sub-Divisional Magistrate, Barasat drew up three proceedings and attached the lands in dispute and appointed the present petitioners as joint Receivers of the attached disputed properties. On Dec. 22, 1975 the petitioners submitted an account before the learned Magistrate showing the expenses for harvesting, thrashing and storing etc. and prayed for realisation of the same. On Jan. 6, 1976 on the basis of an application by the 1st party/opposite parties Nos. 1 to 3 u/s 145(5) of the Cr. P.C. 1973 the Sub-Divisional Magistrate was pleased to cancel the said proceedings and to find them in possession of the property in dispute; and the learned Magistrate also directed the petitioners to deliver possession of the aforesaid lands and harvested paddy etc. to the 1st party/opposite parties Nos. 1 to 3 on payment of the reasonable cost of harvesting and storing incurred by them.

3. After taking delivery of possession the opposite parties Nos. 1 to 3 made an application before the learned Magistrate questioning the accounts submitted by them and prayed for assessment of the cost of harvesting etc. The learned Magistrate however, directed the Junior Land Reform Officer, Amdanga to hold an enquiry regarding the allegation. On receipt of notice from the learned Magistrate the petitioners appeared on March 3, 1976 and filed an objection. The petitioners also disputed the report dated Feb. 2, 1976 submitted by the Junior Land Reform Officer, Amdanga.

4. On March 25, 1976 the learned Magistrate directed the petitioners to deliver the paddy and straw harvested and stored by them to the 1st party/ opposite parties Nos. 1 to 3 in presence of the Junior Land Reform Officer Amdanga and the learned Magistrate also directed the Junior Land Reform Officer to hold a fresh enquiry regarding the yield of the paddy and straw from the disputed land and the expenses incurred thereof. On Sept. 15, 1976 the Junior Land Reform Officer submitted his report but on Aug. 31, 1976 the petitioners further submitted an account relying on the previous account submitted by them. By an order dated 12th Sept. 1977 the learned Magistrate allowed the petition of the opposite parties and directed the Receivers to take payment of the produce in kind. Half of the demand was admissible. It is against this order the Receivers have come up in revision.

5. It is contended that the Cr. P.C. 1973 does not provide for the enquiry against the Receivers. It is further contended that the learned Magistrate acted illegally and in violation of the principles of natural justice in relying solely on the report of the Junior Land Reform Officer. Lastly, it is contended that the order dated Sept. 12, 1977 is void ab initio inasmuch as the same was passed beyond the jurisdiction of the learned Magistrate and as such the same is liable to be set aside. It is pointed out that the learned Magistrate ought to have referred the 1st party/opposite parties to a competent Civil Court for deciding the matter,

6. The learned Advocate for the petitioners refers to the decision of Allahabad High Court in Baqridi v. Indra Vir Singh reported in 1968 Cri LJ 1531 (2). In this case in a proceeding u/s 145 the learned Magistrate directed Supurdar to deposit certain amount towards profits utilised by him, arising out of attached land. It is held that there is no provision in the Cr. P.C. under which the Magistrate can take steps for the recovery of any amount from the Supurdar. The recovery could be made through the Civil Court. It is further held that in a summary proceeding, it is not possible for the Magistrate to determine what amount was actually recoverable from the Supurdar. So the proper forum for claiming the amount by accounting was the Civil Court.

7. The present petitioners were appointed Receivers u/s 146(2) of the Cr. P.C. 1973 by the learned Magistrate. Undisputedly no Receiver in relation to such subject of dispute had been appointed by any Civil Court. So the Receiver appointed u/s 146(2) of the Cr. P.C. would have, subject to the control of the Magistrate, all the powers of

a receiver appointed under the Civil P. C. 1908 (5 of 1908). It is also not the case of either party that a receiver had been subsequently appointed in relation to the subject of dispute by any Civil Court. Under Clause (b) to the proviso to the Section 146(2) the Magistrate may make such other incidental or consequential orders as may be just. So, till the hearing before the Civil Court, the Magistrate retains the power of management. Under Order XL Rule 3 of the Civil P. C. a receiver is to submit his accounts at such periods and in such form as the court directs. He is also to pay the amount due from him. Thus, u/s 146(2) of the Cr. P.C. the receiver appointed by the Magistrate would also be liable to submit his account and pay the amount due from him as the Magistrate may direct. Under the present Cr. P.C. there is no scope for referring such matter namely settlement of account to the Civil Court. The Magistrate himself is competent enough to look into the account, submitted by the receiver and pass necessary order directing the receiver for payment of any amount due from him. The learned Advocate refers to the case which came under the Cr. P.C. of 1955. The amendment of 1955 introduced a novel scheme by which besides attaching the property in dispute, the Magistrate had to draw up a statement of the facts of the case and to forward the record of the proceedings to a competent Civil Court for determination of issue of possession directing the parties to appear before the Civil Court on a date to be fixed by him. Both Sub-section (1) and (2) to Section 146 have been amended under the Cr. P.C. 1973 and old sub-sections prior to the amendment of 1955 have been substituted. Thus, the decision referred to by the learned Advocate for the petitioner has got absolutely no application. Of course the parties themselves can go to the Civil Court for appointment of a receiver. But as stated earlier under the present law the Magistrate has no jurisdiction to refer to the Civil Court any matter relating to the receiver appointed by him. Thus, in this case the learned Magistrate appears to have acted fully within his jurisdiction. No exception can also be taken to the fact that he had taken the help of an officer subordinate to him for making an enquiry regarding the dispute as to accounts. There cannot be also any bar in acting on such report.

8. In the premises there is no substance in this application for revision which must fail.

9. The Rule is accordingly discharged. Rule discharged.