
(1982) CriLJ 2069

Calcutta High Court

Case No: None

In Re: Kashinath
Mondal and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: June 15, 1982

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 144, 145, 146

Citation: (1982) CriLJ 2069

Hon'ble Judges: Jyotirmoyee Nag, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Jyotirmoyee Nag, J.

This application is directed against an order passed by the learned Executive Magistrate, Alipore, u/s 145 of the Criminal P.C. On 30-1-1981 the learned Executive Magistrate passed the following order :

Perused the P.R. which corroborates the contention of the P. P. that he was dispossessed from his rented room on 30-6-1980 by the O. P. As such I convert this case u/s 144 Cr. P.C. to a case u/s 145 Cr. P.C. and draw up proceedings u/s 145 Cr. P.C. directing both the P. P. and the O. Ps. to submit their respective written statement in respect of the disputed room to this court on 1-4-1981. Issue notice accordingly.

The notice was issued to both the parties as follows:

Whereas it has been made to appear to me and I am satisfied from report submitted by the Bhowanipore P.S. as also from petition filed by the 1st party that a dispute likely to cause a serious breach of the peace exists between the parties noted in the margin concerning, possession of a bed room in the ground floor at premises No. 75K,

Padamapukur Road, P S. Bhowanipore, Calcutta-20, within the local limits of my jurisdiction.

I therefore draw up proceedings u/s 145 Cr. P.C. directing both the 1st party and the opposite parties to submit their respective written statements in respect of the disputed room to this court on 1-4-1981.

It is contended on behalf of the petitioner that the proceeding is liable to be quashed inasmuch as the learned Executive Magistrate did not record his satisfaction that there is any apprehension of breach of peace, in the order-sheet it was not so stated. But the notice that was issued and which is described as a proceeding u/s 145 Cr. P.C. which is annexure "D" to the petition contains all the necessary ingredients to draw up a proceeding u/s 145 Cr. P.C. If this is treated as a part of the record, then there is no lacuna in the proceeding of the learned Magistrate. The learned advocate for the petitioner has relied upon certain decisions for his contention that the proceeding is bad and should accordingly be quashed. He has relied on a decision reported in [Mathuralal Vs. Bhanwarlal and Another](#), the relevant paragraph being at page 247. In that decision it has been held that a preliminary order should record first the notification of the Magistrate that a dispute likely to cause a breach of the peace exists concerning any land or water or their boundaries, and next, the issuance of an order, known to lawyers practising in the Criminal Courts as a Preliminary Order, stating the grounds of his satisfaction and requiring the parties concerned to attend his Court and to put in written statements of their respective claims as regards the fact of actual possession of the subject of dispute. The scheme of Sections 145 and 146 is that the Magistrate, on being satisfied about the existence of a dispute likely to cause a breach of the peace, issues a preliminary order stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements." The point that has been raised in the present case has not been dealt with or even raised in the Supreme Court case, namely, whether the show-cause notices giving, details and all the necessary ingredients u/s 145 Cr. P.C. will make up for the lacuna in the order made in the order-sheet. So far as the two cases cited by the learned advocate for opposite party are concerned, one is [Bishnupada Jana Vs. The State of West Bengal](#), which is a decision of a Division Bench of this court, and the other is at page 677 of the same Volume Tarapada Biswas v. Prafulla Kumar Das which is a decision by Monoj Kumar Mukherjee, J. In these cases it has been laid down that the notices u/s 107 of the Cr. P.C. in the former case and u/s 145 of the Cr. P.C. in the latter case which is one part of the record together satisfy the legal requirements of the sections that will make the proceeding legal although the order does not indicate all the necessary ingredients. A case reported in [Mohammad Abbas and Another Vs. Mohammad Mustaqim and Others](#), has also been cited by the learned advocate for the opposite parties. In that case the learned Magistrate when drawing up the proceeding made the following order:

After hearing the lawyers of both the parties and on perusal of their show cause, I am satisfied that there is a bona fide land dispute between the parties. I, therefore, draw up a

proceeding u/s 145, Criminal P.C. to decide the factum of possession once for ever.

It was contended by the petitioner therein that, the section requires that the Magistrate should be satisfied before initiating a proceeding of Section 145 Cr. P.C. that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. This omission in the order-sheet was made up by notice issued to the parties in pursuance of the said order. In the notice it was clearly stated that there was apprehension of breach of peace but it was held in that case that the contents of the notice is the result of a ministerial act and that will not cure the defect in the order. The order itself must indicate that the Magistrate was satisfied that the dispute was likely to cause a breach of the peace and the proceeding u/s 145 Cr. P.C. was quashed. However, following the decisions of this court already cited above, I hold that the proceeding is legal and no ground is made out for quashing the same. In the result, this application is dismissed.