Shridhar Sadashiv Katdare Vs P.K. Antia (Dr.) and Another

Court: Bombay High Court

Date of Decision: Oct. 25, 1982

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 145(1), 146(1), 482

Citation: (1983) 1 BomCR 5

Hon'ble Judges: R.A. Jahagirdar, J

Bench: Single Bench

Advocate: M.B. Chitre and P.V. Patankar, M.D. Gangakhedkar, P.P, for the Appellant; M.H. Ponda, for the Respondent

Judgement

R.A. Jahagirdar, J.
This petition u/s 482 of the Code of Criminal Procedure seeks to challenge an order passed by the learned

Metropolitan Magistrate, 23rd Court, Bombay, on an application preferred by the petitioner seeking an order of attachment of certain properties,

hereinafter referred to as ""the disputed property"" u/s 146(1) of the Code. The facts leading to there proceedings have been set out in the judgment

of the Court below and it is unnecessary for me to narrate them in great details. However, for the disposal of the points raised in this petition, I will

mention only a few facts.

2. A premises consisting of five rooms and also one common room forming part of what is called shop No. 2 in a building named Stadium House

at Bombay was taken on lease by five doctors of whom one is the petitioner. This was done as long ago as in the year 1955. The petitioner was

the occupant of one of the rooms wherein he was carrying on his profession as a radiologist. Unfortunately in the year 1974 he suffered a heart

attack and thereafter, doubly unfortunately, he developed an eye trouble which compelled him, at least temporarily, to give up his profession and

go to Australia where his son and daughter-in-law are residing. Before he did that, he had sold away the apparatus required for his profession to

one Dr. Deshmukh and the respondent herein.

3. It is mentioned by the petitioner that he returned to India on 18th of October, 1980 when he found that the room which, according to him, was

still tenanted by him had been occupied by the respondent in this petition. This he came to know on or about 21st of October, 1980. After making

certain efforts to obtain possession of the room, which proved unsuccessful, he filed an application u/s 145 of the Code on 17th of December,

1980. The preliminary order u/s 145(1) was passed by the learned Magistrate on 25th of February, 1981 and this order has been subsequently

confirmed by this Court.

4. It is on 7th of August, 1981 that the application which has led to the present petition was filed u/s 146 of the Code praying therein that the

disputed property should be attached by an order of the Court. The learned Magistrate, by his judgment and order dated 3rd of June, 1982,

dismissed the application by holding that the conditions on the satisfaction of which an order u/s 146(1) could be passed did not exist in this case.

It is this order that is challenged in this petition.

5. Mr. Chite, the learned Advocate appearing in support of the petition, his contended that the learned trial Magistrate has misdirected himself in

holding that there should be in existence conditions of a more serious nature before an order of attachment could be passed u/s 146(1). According

to him, mere apprehension of a breach of the peace if alleged and if it is shown to exist should be sufficient for a Magistrate to act u/s 146(1). He

has taken me through the judgment of the learned trial Magistrate and also through the relevant parts of the application. In the application which led

to the proceedings u/s 145, the petitioner has mentioned the circumstances which I have briefly referred to above leading to his temporary

migration to Australia and his return to Bombay. Thereafter he has mentioned that in the first week of August 1980 before he returned to India, the

petitioner had actually written to Dr. Deshmukh that he was coming to Bombay in or about the end of October 1980. According to the petitioner,

on 21st of October 1980 when he went to his consulting room along with his son-in law, he found that his name plated had been removed and the

room had been occupied by the present respondent. Several others facts have been mentioned in the said application. However, it is not necessary

to refer to the same.

6. That the respondent was already in possession of the disputed property when the same is thus established on the averments of the petitioner

himself. It is true, as Mr. Chitre has pointed out, that this Court has already confirmed the view taken by the Court of first instance that conditions

for passing an order u/s 145(1), namely apprehension of a breach of the peace, existed when the petitioner approached the Court in December

1980. This, however, does not enable me to appreciate the next argument of Mr. Chitre that once an order u/s 145(1) is passed, an order u/s

146(1) should follow. Apprehension of a breach of the peace is the foundation for an order to be passed u/s 145(1). Conditions which must be

satisfied before an order u/s 146(1) is passed are, however, totally different. The very fact that section 146(1) mentions that the order under that

section is to be after the order u/s 145(1) is passed must necessarily mean that the conditions on the basis of which the two orders are passed are

different.

7. Section 146(1) says that if the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one

of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy

himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has

determined the rights of the parties thereto with regard to the person entitled to the possession thereof. It is indeed the case of Mr. Chitre that here

emergency exists, inasmuch as if the petitioner goes to the disputed property there is likelihood of a breach of the peace. It is not possible for me to

accept this submission because in the first place the Magistrate must be satisfied that there is a case of emergency. A party cannot contend that by

his action he will create an emergency, or an emergency will be created and, therefore, section 146(1) should be passed. In the instant case it has

not been alleged nor has it been shown that there is any sudden emergency of such a nature as to call for an order of attachment. It is not alleged,

for instance that the dispute property will be dissipated. Nor has it been alleged that the property is likely to be alienated by the respondent in

favour of somebody else. Admittedly the respondent has been in settled possession of the disputed property even before the petitioner returned to

India and before he went to the disputed property. I do not think it is necessary to dwell on this point any further because on the facts of this case I

am satisfied that there is no emergency of any kind inviting an order u/s 146(1).

8. Mr. Chitre, however, in support of his arguments relief upon certain authorities to which I must make a brief reference, though I am satisfied that

none of them is relevant to the question arising u/s 146(1) and definitely not relevant to the facts and circumstances of this case. The first of the

judgments relied upon by Mr. Chitre is Amritlal N. Shah v. Nageswara Rao AIR 1947 Mad 133, wherein it has been held that forcible

dispossession need not necessarily mean that actual force should be used. It has been further held therein that dispossession on misrepresentation

and improper threats are sufficient to constitute forcible dispossession. It is not necessary for me to consider whether this view is correct or not,

because the question before me today is whether there is an apprehension of a breach of peace resulting from a forcible eviction.

9. Das Raj v. Emperor AIR 1930 Lah 781, on which Mr. Chitre placed reliance next, is, in my opinion, so hopelessly irrelevant to the point

involved before me that normally I would not have referred to this judgment at all but for the persistence with which this point has been stressed.

Das Raj"s case refers to the interpretation of the word ''emergency'' occurring in section 72 of the Government of India Act (1919). On page 789

of the report it has been mentioned than a emergency may result, according to the very definition contained in Webster"s Dictionary, ""from an

unforeseen occurrence or combination of circumstances"". It has been further mentioned that this combination may not take place all at once but

gradually and immediate action may be rendered necessary when the culminating point is reached. The question before the High Court in Das

Raj"s case was where the action of the Governor General in Council in declaring an emergency u/s 72 of the Act was justified. In my opinion, this

judgment is of no relevance at all to the points involved in the present case.

10. Mr. Chitre then referred to Larchbank (Owners) v. British Petrol (Owners) 1943 App Cas299. The facts of this case disclosed that two

vessels were approaching each other and there was actually a fog. Certain Admiralty directions had provided that the use of whistles or sirens in a

fog by ships in convoy was undesirable and that they should not be sounded except in emergency or on hearing another ship approaching, when

the master must use his discretion. In a collision action brought by the owners of one vessel against the owners of the other, the assessors took the

view that, as a question of seamanship apart from the Admiralty directions, one of the ships should have sounded the fog signal. It was held by the

House of Lords, that an ""emergency"" had arisen, not by reason of the mere fact of the fog, but because the master of the British Petrol had good

reason to think that the Larchbank might be approaching, even though he could not hear her, and that, accordingly, he should have sounded fog

signals. I am unable to find out any relevance of this judgment to the present case. If it is suggested that an approaching emergency is also an

emergency, then also on the facts of this case emergency of the type that is required for an order u/s 146(1) does not exist.

11. The word ''emergency'' has been defined in ""Words and Phrases Legally Defined"" by Saunders, Volume 2, 1969 Edition, on page 153.

Among others, the following definition is to be found therein :-

Emergency" can be used to describe a state of things which is not the result of a sudden occurrence. A condition of things causing a reasonable

apprehension of the near approach of danger would, I think, constitute an emergency. The gradual approach of a hostile invader might well at

sometime or other constitute an emergency...

It is suggested that an emergency may occur gradually and not suddenly. One need not quarrel with that suggestion. But I do not see how a party

can say that he is going to create and emergency and then ask the Court to pass an order of attachment. It is not the suggestion that as a result of

any action by any other person or party a situation is being created which could be characterised as an emergency warranting an order by the

Court u/s 146(1). Here is a party approaching the Court and saying that if he goes to the disputed property an emergency suddenly will be created

and for handling that situation he should be armed with an order of attachment from the Court. The argument is hopelessly untenable and I have no

hesitation in rejecting the same.

12. In the result, this petition must fail. Rule is accordingly, discharged. The order dated 3rd of June 1982 passed by the learned Metropolitan

Magistrate, 23rd Court, in Criminal Case No. 4/N of 1981 is confirmed.

13. Since the preliminary order u/s 145(1) has been passed nearly one and half years ago, the learned trial Magistrate will consider the feasibility of

disposing of those proceedings as expeditiously as possible.