

The Indian Law Reports

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

BABU RAM,—*Petitioner.*

versus

RAMJI LAL AND OTHERS,—*Respondents.*

Criminal Revision No. 62 of 1963.

Code of Criminal Procedure (V of 1898)—S. 145—Proceedings under—Whether can be dismissed in default of the appearance of the petitioner—Order of dismissal—Whether can be reviewed by the magistrate—Petition under S. 145 dismissed in default after the preliminary order was passed under S. 115(1)—Fresh petition filed and fresh preliminary order passed—Question of possession—Whether to be determined with reference to the fresh order.

1963
August, 6th.

Held, that an order dismissing a petitioner's application under section 145 of the Code of Criminal Procedure for default of the appearance of the petitioner is not a valid order. The proceedings under section 145 of the Criminal Procedure Code are not between two private individuals despite the fact that a dispute about property giving jurisdiction to the Magistrate would be of a private nature. Dispute of possession and title to the property as such are generally settled by civil Courts, and the object of the legislature in enacting section 145 of the Criminal Procedure was to act in the interest of law and order in cases where such disputes about property are likely to lead to breach of peace. Once a Magistrate is informed that there is a likelihood of the breach of peace because of such a dispute, it is his duty to prevent breach of peace in the manner laid down by section 145. He is not relieved of that duty merely because the person at

whose instance the proceedings were started fails to appear at one of the hearings or keeps away from the Court for some oblique motive. It is still the duty of the Magistrate to proceed with the matter in accordance with the provisions of section 145 and pass a final order in terms of sub-section (5) of that section.

Held, that a magistrate who has once passed an order of dismissal had no jurisdiction to review that order or set it aside. Unlike a civil Court, a criminal Court, other than a High Court, does not possess any inherent powers, nor is there any provision in the Code of Criminal Procedure, which governs the proceedings instituted in criminal Courts, that empowers a Magistrate to review its judgment or orders, not even in cases where the order is patently wrong or contrary to the provisions of law.

Held, that order of dismissal in default of a petition under section 145, Code of Criminal Procedure, continues to be valid order unless challenged in a superior Court or set aside in proper proceedings. Merely because it is a wrong order, it cannot be said to have been made without jurisdiction. Where a Court is validly seized of a matter and has jurisdiction to entertain it, it has jurisdiction to decide wrongly as well as rightly, and if it arrives at an erroneous decision, it still acts within its jurisdiction. When an order dismissing the first application remains unassailed, and the petitioner puts in a second application on same facts, the proceedings are fresh proceedings and the only course open to the magistrate, while passing the final order is to determine the question of possession with reference to the date of the preliminary order passed in the fresh proceedings and not at any earlier or subsequent point of time.

Case reported under section 438 Criminal Procedure Code by Shri Muni Lal, Additional Sessions Judge Karnal with his memo. No. 262 RK dated 26th December, 1962, for revision of the order of Shri R. N. Puri, Magistrate Ist Class, Karnal; dated 12th May, 1962, dismissing the application in default.

MANI SABRAT JAIN, ADVOCATE, for the Petitioners.

RAM RANG, ADVOCATE, D. S. KANG, ADVOCATE, for the
ADVOCATE-GENERAL, for the Respondents.

ORDER OF THE HIGH COURT

GURDEV SINGH, J.—This is a reference under section 439 of the Criminal Procedure Code by the Additional Sessions, Judge, Karnal, recommending that the final order passed by Shri R. N. Puri, Magistrate First Class, Karnal, on 12th May, 1962, disposing of the petitioner Babu Ram's application, dated 25th November, 1961, under section 145 of the Criminal Procedure Code be set aside and the case remanded for fresh decision in accordance with law. The detailed facts of the case are found in the order of reference, and briefly recapitulated are as follows:—

On 24th October, 1961, the petitioner Babu Ram put in an application under section 145 of the Criminal Procedure Code stating that there was a dispute about 21 Kanals of land situate within the limits of village Raisan between him and Ramji Lal and others members of the opposite party, who wanted to evict him forcibly, and this dispute was likely to cause breach of peace. That very day the learned Magistrate passed a preliminary order under subsection (1) of section 145 of the Criminal Procedure Code. After several adjournments, when the case was taken up on 25th November, 1961, the petitioner was found to be absent, and, accordingly, the learned Magistrate dismissed his application in default.

Later in the day, Babu Ram petitioner came to the Court and put in a fresh application under section 145 of the Criminal Procedure Code based upon the same allegations as were made by him in his earlier application. In a note appended to that application

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he stated that his earlier applicaion had been dismissed in default and prayed that after setting aside that order of dismissal the proceedings be continued. Proceedings started on this second application, and on 2nd January, 1962, the learned Magistrate passed a fresh preliminary order under sub-section (1) of section 145 of the Criminal Procedure Code. Appearing in response to the notices issued to them, the respondents contested the application, and after due proceedings and consideration of the material placed before him, the learned Magistrate declared by his order, dated 12th May, 1962, that the respondents were in possession of land on the date of the preliminary order, and directed that they shall not be ousted, except in due course of law. Having failed to obtain any redress, the petitioner Babu Ram assailed this order of the Magistrate in the Court of Session by means of a revision petition. It was contended on his behalf that the order passed by the Magistrate on 25th November, 1961, dismissing his first application under section 145 of the Criminal Procedure Code in default was illegal as the proceedings initiated under section 145 could not be dismissed for non-appearance of the applicant, and irrespective of the default in appearance, the Magistrate was bound to decide the matter in accordance with law. It was further urged that since the order dismissing the first application in default of appearance was unsustainable, its result was that the original proceedings started by the petitioner under section 145 of the Criminal Procedure Code remained pending, and the final order had to be passed with reference to the date on which the first preliminary order under sub-section (1) of section 145 of the Criminal Procedure Code was made by the Court on 24th October, 1961, and not with reference to the preliminary order dated 2nd January, 1962, which the learned Magistrate unnecessarily passed on the second application made by

the petitioner under section 145 of the Criminal Procedure Code. Being impressed by these arguments, the learned Additional Sessions Judge has recommended that the final order passed by the Magistrate on 12th May, 1962, be set aside. Giving the reasons for his opinion that the order under revision was not valid, the learned Additional Sessions Judge observed as follows:—

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“As indicated above, the order of dismissal of the proceedings for default of the petitioner on 25th November, 1961, is illegal. In this view of the matter, the first preliminary order passed on 24th October, 1961, stands, and is in operation and effect. As such, the second preliminary order passed on 2nd January, 1962, cannot be said to be valid. Therefore, the impugned order which was passed on a consideration as to who was in possession of the land on 2nd January, 1962, is not warranted by law and and the same resulted into miscarriage of justice.”

In opposing the recommendation, Shri Ram Rang, appearing on behalf of the respondents, has contended:—

- (a) that since proceedings under section 145 of the Criminal Procedure Code were of quasi-civil nature, as held in *Ganga Bux Singh v. Sukhdin* (1), the Magistrate was fully competent to dismiss the application under section 145 of the Criminal Procedure Code,
- (b) that even if the order of the Magistrate dismissing the application for default was

(1) A.I.R. 1959 All. 141 (F.B.).

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illegal, it had operated to terminate the proceedings, and the only remedy of the petitioner was to put in a fresh application under section 145 of the Criminal Procedure Code which he, in fact, did on 25th November, 1961.

- (c) that the order of dismissal in default of appearance passed by the Magistrate had become final as no revision against that order was filed nor was that order set aside by any competent Court,
- (d) that the order of dismissal of the first complaint having become final, the learned Magistrate had neither any jurisdiction nor any authority to set aside or ignore the same and restore the original proceedings,
- (e) that as a matter of fact the Magistrate, and quite properly so, did not accede to the petitioners request for restoration of the original proceedings and treating the application, dated 25th November, 1961, as a fresh proceedings passed the preliminary order on 2nd January, 1962, in terms of sub-section (1) of section 145 of the Criminal Procedure Code, and
- (f) that the proceedings taken on the original application, dated 24th November, 1961, having ended, the final order under section 145 of the Criminal Procedure Code could only be passed with reference to the preliminary order under sub-section (1) of section 145 of the Criminal Procedure Code passed on the second application on 2nd January, 1962, and, accordingly, the order of the Magistrate was valid.

After hearing the parties' learned counsel, I find myself in agreement with the learned Additional Sessions Judge that the order passed by the Magistrate on 25th November, 1961, dismissing the petitioner's application, dated 24th October, 1961, in default of appearance was not a valid order. The proceedings under section 145 of the Criminal Procedure Code are not between two private individuals despite the fact that a dispute about property giving jurisdiction to the Magistrate would be of a private nature.. Disputes of possession and title to the property as such are generally settled by civil Courts, and the object of the legislature in enacting section 145 of the Criminal Procedure Code was to act in the interest of law and order in cases where such disputes about property are likely to lead to breach of peace. If this was the object of the legislature in authorizing criminal Courts to step in private disputes between the parties, it is obvious that once the Magistrate is informed that there is a likelihood of the breach of peace because of such a dispute, it is his duty to prevent breach of peace in the manner laid down by section 145 of the Criminal Procedure Code. He is not relieved of that duty merely because the person at whose instance the proceedings were started fails to appear at one of the hearings or keeps away from the Court for some oblique motive. It is still the duty of the Magistrate to proceed with the matter in accordance with the provisions of section 145 of the Criminal Procedure Code and pass a final order in terms of sub-section (5) of section 145 of the Criminal Procedure Code. It is true that where the applicant absents himself and thus fails to lay the necessary material before the Court, the Court may not be in a position to determine which of the contending parties was in possession on the date of the preliminary order, and in that case it may have to act in accordance with the provisions of Section 146 of the Criminal Procedure Code, or the

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case of the applicant may fail. All the same, the Court has to proceed with the case irrespective of the fact whether the party moving the Court is or is not present before it. There is a string of authority in support of this view, and I respectfully agree with the observations in *Bhavrao Ganpatrao v. Bhimrao Tukarmaji an others* (2), upon which the learned Additional Sessions Judge has relied.

After the passing of this order, two courses were open to the petitioner. He could either approach this Court for setting it aside, or put in a fresh application under section 145 of the Criminal Procedure Code if the dispute about that property still existed and the likelihood of breach of peace was continuing. If he disputed the correctness of the first order of dismissal and did not wish to put in a fresh application under section 145 of the Criminal Procedure Code, then the order in dispute could be set aside only by this Court under section 439 of the Criminal Procedure Code. The Magistrate who had once passed the order of dismissal had no jurisdiction to review that order or set it aside, and, accordingly, he was not competent to order that the proceedings once dismissed be restored. Unlike a Civil Court, a criminal Court, other than a High Court, does not possess any inherent powers nor is there any provision in the Criminal Procedure Code, which governs the proceedings instituted in criminal Courts, to review its judgment or orders, not even in cases where the order is patently wrong or contrary to the provisions of law. In *Sankatha Singh and others v. State of Uttar Pradesh* (3), their Lordships of the Supreme Court ruled that even when an appeal could not be dismissed for failure of the appellant or his counsel to appear at the hearing, the Sessions Judge was not competent to alter or review his judgment once signed, except for correcting a clerical error.

(2) A.I.R. 1958 Bom. 450.

(3) A.I.R. 1962 S.C. 1208.

This is also in consonance with the provisions of section 369 of the Criminal Procedure Code, which specifically prohibits a criminal Court from altering or reviewing its judgment except correcting a clerical error.

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Since in the case before us the original order of dismissal passed on 25th November, 1961, had not been challenged in a superior Court, nor was it set aside in a proper proceedings, that order continued to be valid. Merely because it was a wrong order it cannot be said to have been made without jurisdiction. As has been often observed, where the Court is validly seized of a matter and has jurisdiction to entertain it, it has jurisdiction to decide wrongly as well as rightly, and if it arrives at an erroneous decision, it still acts within its jurisdiction.

Thus, when the second application under section 145 of the Criminal Procedure Code came up before the Magistrate, we find that he was faced with the situation that one order dismissing the first application remained unassailed, and the petitioner had put in a second application on the same facts alleging that the dispute about the property between the parties persisted and there was still likelihood of the breach of peace. On this fresh application he had to proceed in accordance with the provisions of section 145 of the Criminal Procedure Code, and quite properly on 2nd January, 1962, he made a preliminary order in terms of sub-section (1) of that section. Once it is held that it was a new proceedings with which the learned Magistrate was dealing, the only course open to him while passing the final order under sub-section (1) of section 145 of the Criminal Procedure Code was to determine the question of possession with reference to the date of the preliminary order passed in the fresh proceedings on 2nd January, 1962, and not

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at any earlier or subsequent point of time. This is what the learned Magistrate in fact did. On a consideration of the material placed before him by the parties, he came to the conclusion that on the date of the preliminary order, i.e., 2nd January, 1962, the property in dispute was in the possession of the respondents and not that of the petitioner, and, accordingly he declared the respondents in possession, prohibiting the petitioner from interfering with the same. ✓

So far as the decision on the question of possession is concerned, the finding of the trial Court is supported by material on the record, and sitting as a Court of revision I do not find any justification for interfering with that finding. In these circumstances, the order of the Magistrate cannot be interfered with and the reference made by the learned Additional Sessions Judge is declined.

The petition for revision is dismissed..

K.S.K.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

PURAN SINGH,—Petitioner.

versus

BHARTU AND ANOTHER,—Respondents.

Civil Writ No. 366 of 1963.

1963
 —————
 Oct., 21st.

Punjab Gram Panchayat (Amendment) Act (XXVI of 1962) S. 13-C—Punjab Gram Panchayat Election Rules—Rule 44—Whether mandatory or directory—Security for costs of an election petition deposited with the Prescribed Authority and not in the Treasury, it being closed—Whether substantial compliance of the Rule. ✓

Held, that the provisions of section 13-C of the Punjab Panchayat (Amendment) Act, 1962 read with Rule 44 of the Punjab Panchayat Election Rules are directory and not