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order rejecting Shri Wazir Singh Jaijee's nomination was improper. The impugned election of Shri Ranjit Singh, the returned candidate, must be, and is hereby, declared to be void. Parties in the circumstances are directed to bear their own costs throughout.

B.R.T.

REVISIONAL CRIMINAL

Before Shamsher Bahadur, J.

MISRI SINGH,—*Petitioner.*

versus

PALA SINGH AND ANOTHER—*Respondents.*

Criminal Revision No. 52 of 1964

1964

July, 15th.

Code of Criminal Procedure (V of 1898)—S. 145—Magistrate recording his satisfaction about the existence of apprehension of breach of peace while passing the preliminary order—Whether bound to express satisfaction on that point in the final order as well.

Held, that the Magistrate having expressed his satisfaction about the existence of the apprehension of breach of peace at the time of passing the preliminary order, was not bound to repeat the expression of that satisfaction again in the final order which he passed under sub-section (6) of section 145 of the Code of Criminal Procedure, in the absence of any pleadings or evidence adduced by the parties showing that his satisfaction at the preliminary stage was not well founded.

Case reported under Section 438, Criminal Procedure Code, by Shri Diali Ram Puri, Additional Sessions Judge, Bhatinda, with his letter No. 387, dated 16th April, 1964, for revision of the order of Shri Birbal, Magistrate Ist Class, Bhatinda, dated the 20th November, 1963, ordering that the possession of the land in dispute be restored to respondents.

Application under Section 145 Criminal Procedure Code.

R. M. VINAYAK, ADVOCATE, for the Petitioner.

K. K. CUCCRIA, ADVOCATE, for the Respondents.

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—On an application moved by Pala Singh, respondent under section 145 of the Code of Criminal Procedure, the Executive Magistrate at Bhatinda passed a preliminary order expressing his satisfaction that "a dispute likely to induce a breach of peace exists between Pala Singh * * * * on the one hand and Misri Singh * * * *on the other" and considering the case as one of emergency got the land attached. Misri Singh filed his reply later and denied the existence of any dispute. There was not a word said in this statement whether there was a genuine apprehension of any breach of peace. The learned Magistrate after giving a detailed consideration to the merits of the claims of the contending parties reached the conclusion that Pala Singh was entitled to remain in possession of the disputed land and passed the final order accordingly under sub-section (6) of section 145 of the Code of Criminal Procedure.

Misri Singh filed the petition for revision to the learned Sessions Judge, Bhatinda, who made a reference to this Court that the order of the Magistrate ought to be quashed as no finding was recorded in the final order that there existed an apprehension of breach of peace. In the view of the learned Sessions Judge, this is the very basis for the exercise of jurisdiction under section 145 and in the absence of the finding, the order of the Magistrate becomes unsustainable.

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Under sub-section (1) of section 145, a Magistrate when he is satisfied from "a police-report or other information that a dispute likely to cause a breach of peace exists concerning any land . . . ." he can pass an order requiring the parties concerned in such a dispute to attend his Court to put in their respective claims as respects the fact of actual possession. Such statements were filed and the Magistrate did consider the merits of the possessory title claimed by the rival parties. The question is whether the Magistrate was bound to go into the question whether there was an apprehension of breach of peace when no allegation controverting the claim of Pala Singh was even made by Misri Singh in his statement. The matter was considered by a Division Bench of the Calcutta High Court in *Khudiram Mandal* v. *Jitendra Nath and another* (1), (Chakravartti and Sinha, JJ). Sinha, J., speaking for the Court, observed at p. 725 thus:—

> "The question of being satisfied as to the likelihood of a breach of the peace occurring, is an element to be considered for an order under section 145(1), but once the proceedings have been validly initiated, it is not one of the essential ingredients in passing the final order under section 145(6). No doubt, the jurisdiction being a preventive one, the moment a Magistrate is satisfied that there is no longer a possible apprehension of a breach of the peace he should bring the proceedings to an end. But that does not mean that he should at every stage go on recording his satisfaction as to the existence or otherwise

(1) A.I.R. 1952 Cal. 713.

of such an apprehension."

In the instant case the Magistrate indisputably had expressed his satisfaction about the existence of the apprehension of breach of peace. He was not bound to repeat the expression of that satisfaction again in the final order which he passed under sub-section (6). No doubt if Misri Singh had raised that point and adduced evidence, the Magistrate would have given a finding once again and might have taken the view that the satisfaction which he had expressed in the first order was not well-based. But without any pleadings or evidence, he was not bound to reiterate what he had already said in the preliminary order.

There is also a Single Bench authority of Srinivasachari, J., in *Abdullah and others* v. *Hanmanthappa* (2), which lays down the same principle. Said he:—

> "Where the Magistrate has come to a conclusion that there is an apprehension of breach of the peace and thereafter calls upon the parties to file their respective claims, the law does not contemplate a further finding unless the Magistrate is satisfied that the conclusion arrived at by him in the first instance is not correct in which case he may vary his order and say that there is no apprehension of breach of the peace. Therefore, the fact that there is no subsequent finding that there is apprehension of breach of

(2) A.I.R. 1953 Hyd. 286.

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the peace does not make the order illegal."

Mr. Vinayak, learned counsel for the petitioner, has placed reliance on a Single Bench authority of this Court in *Maida and others* v. *The State of Punjab and others* (3), where Bedi, J., observed that the basis of proceedings under section 145 of the Code is the likelihood of a breach of the peace and it is incumbent on a Magistrate to give a finding on the point whether there existed a danger of breach of the peace over possession of the land. In this case, there was no preliminary order passed and although the point was raised about apprehension of the breach of peace, the Magistrate found some difficulty in giving a definite finding and referred the matter to the Civil Court. Having received the decision of the Civil Court, the Magistrate decided in accordance with the finding recorded by the Civil Court without giving expression of his own views. In my opinion, the facts of *Maida's case* were quite different and distinguishable from those in the present case. The authorities of the Calcutta and the Hyderabad High Courts are clearly expressed on the point and being in respectful agreement with them, I would hold that the Magistrate was not bound to give a finding for the second time under sub-section (6) of section 145 of the Code of Criminal Procedure about the apprehension of breach of peace.

I would, accordingly, decline to accept the reference of the learned Sessions Judge and dismiss this petition.

R. S.

(3) 1963 P.L.R. 317.