

ALLAHABAD HIGH COURT

Farzand Ali

Vs.

Shaukat Ali

Criminal Revn. No. 201 of 1967, against order of S.J. Faizabad
(G.D. Sahgal, G.S. Lal and Jagmohan Lal, JJ.)

27.04.1967. 08.01.1970

JUDGMENT

Sahgal, J.

1. The Sub-Divisional Magistrate, Tanda, had before him a proceeding pending under Section 145 of the Criminal Procedure Code. As the Magistrate was unable to decide as to which of the parties was in possession of the disputed property at the relevant time, he made a reference to the Civil Court under Section 146(1) of the Code of Criminal Procedure. The reference was decided by the Munsif of Akbarpur and he transmitted his finding thereon to the Sub-Divisional Magistrate. The Sub-Divisional Magistrate on receipt of that finding disposed of the proceeding before him in conformity with the decision of the Civil Court. Against that order of the Sub-Divisional Magistrate an application in revision was filed before the Sessions Judge, Faizabad. The Sessions Judge dismissed the application on the ground that in view of an authority of this Court, the finding of the Civil Court could not be challenged in revision not only against that particular finding, but also in revision against the final order passed by the Magistrate on the basis of that finding. A contrary view of a Full Bench of the Patna High Court was cited before him but he being bound by the view of the Allahabad High Court could not help the applicant before him.

2. It is in these circumstances that an application was filed in revision before this Court. The matter came up before a learned single Judge of this Court who referred it to a Division Bench and that Bench finding in conflict of authority of this Court on the point in *Ram Govind Singh v. Ram Nath*¹, and *Syed Hasan v. Munsif Havali, Lucknow*², these two being the only authorities cited before that Bench, referred the matter to a Full Bench. That is how the matter comes up before us.

3. The short point to be decided in the case is as to whether when a reference is made to a Civil Court under Section 146(1) of the Code of Criminal Procedure, can the finding of the Civil Court which cannot be challenged in appeal, revision or review be challenged in revision against the order of the Magistrate after he has disposed of the proceeding before

him under Section 145 in conformity with that finding ?

¹1967 All WR (HC) 8

²1967 All WR (HC) 448

4. The trend of authority of this Court is to the effect that it cannot be so challenged : vide *Taashuq Hussain v. State*³. *Chokhey Lal Moti Ram v. Babu Lal Behari Lal*⁴. *Badri Nath Panday v. U. P. State*⁵, and *Guru Prasad Pandey v. State*⁶, All these authorities except the last one are single Judge authorities, the last one being a decision of Division Bench. A discordant note has been struck only in the single Judge case of 1967 All WR (HC) 448.

5. There is, however, a majority decision of the Patna High Court in a Full Bench case which takes a contrary view - *Raja Singh v. Mahendra Singh*⁷, - the main judgment expressing the majority view, that of Misra, J., being based on certain observations made in a Madras case in *Rangammal v. Rama Subharavalu Reddiar*⁸, This case of the Patna High Court has been followed by the same High Court in *Mt. Sudamawati Kuer v. Ram Chandra Singh*⁹. and has been approved of in preference to the authority of this Court by the Assam High Court in *Ram Lakhan Rai Choudhary v. Raghunath Choudhary*¹⁰, The Ccutta and the Madras High Courts have also taken a view in consonance with the view of this Court disclosed in the majority of cases except the one in 1967 All WR (HC) 448 (vide *Ram Narayan Goswami v. Biswanath Goswami*¹¹, and *Mathu Sathurayar v. Lourduswami Odayar*¹²).

6. The matter having been referred to a Full Bench the whole thing is at large and can well be decided by referring to the relevant provisions of Section 146 of the Code of Criminal Procedure. The relevant provisions are :-

146(IB) "The Civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it conclude the enquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding under Section 145 in conformity with the decision of the Civil Court."

(ID) "No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed."

(IE) "An order under this section shall be subject to any subsequent decision of a Court of competent jurisdiction."

7. The question to be decided is whether in view of the provisions of subsection (ID) of Section 146, is it open to the High Court in revision to interfere with the finding of the Civil Court after the Magistrate had disposed of the proceeding before him in conformity therewith, there being no controversy on the point in view of the clear provisions of this sub-section that this finding cannot be interfered with by an appeal or an application for review or revision being directly filed against it ?

8. The provisions of this sub-section came up for consideration before the Supreme Court in connection with the question as to whether the proceedings are of a civil nature and can, in view of the provisions of Section 141, Code of Civil Procedure, they be transferred from one civil

court to another under Section 24 of that Code. The Supreme Court observed that there was good authority for saying that it was a civil proceeding and as such could be transferred from one Court to another under Section 24 of the Code of Civil Procedure . As to sub-section (ID) they observed that if this provision had not been enacted an appeal or revision application would have been maintainable against the

³1958 All LJ 270 : (AIR 1959 Alla 568) ⁵1963 All LJ 1101 : (AIR 1965 All 127); 1967 All WR (HC) 8

⁴ AIR 1960 All 599

⁶1967 All LJ 649

¹¹ AIR 1959 Cal 366

⁷ AIR 1963 Pat 243

⁹ AIR 1963 Pat 320

¹² AIR 1959 Mad 111

⁸ AIR 1960 Mad 169

¹⁰ AIR 1969 Ass81

finding and now that it was there, the only effect of it was that neither an appeal nor a revision was any longer maintainable. This consequence ensued because of the express provision and not because the proceeding before the Civil Court was not a civil proceeding, vide *Ram Chandra Agarwal v. State of Uttar Pradesh*¹³,

9. This authority, however, cannot be of help to us in view of the contention of Sri Saghir Ahmad on behalf of the applicant that the proceeding arising out of a reference to a Civil Court under Section 146 may be a civil proceeding but when once the Magistrate disposes of the case in accordance therewith, it merges in his order and as that order is revisable as an order of a Criminal Court, the finding also can be interfered with in such a revision.

10. He has relied on the observations in AIR 1960 Madras 169 which have been adopted in the leading majority judgment of Misra, J. by the Patna High Court in their Full Bench case already referred to in AIR 1963 Patna 243. The observations of the Madras High Court in the case referred to above and decided by Ramaswami, J. while dealing with interpretation of Section (ID) of Section 146 are as follows :-

"This restriction is but proper because the findings get merged in the decision of the Magistrate and all the grounds that can be urged against the finding can be urged against the finalised decision and if there is no such restriction there will be multiplicity of proceedings and possible conflicting revisional orders reducing the whole thing into an absurdity. This wise restriction has been conceived in the best public interests and involves no invasion of the fundamental right or diminution of the paternal and supervisory jurisdiction of this Court."

11. Let us, however, revert to the provisions of the statute itself and see whether the bar contemplated under subsection (ID) is a bar against the finding being interfered with in revision even against the order of the Magistrate who decides the proceeding before him in accordance with the finding of the Civil Court. A careful perusal of the manner in which the sub-section has been drafted would show that even in revision from the ultimate order which disposes of the proceedings in accordance with the finding of the Civil Court, the finding of the Civil Court cannot be interfered with.

12. The sub-section provides that "no appeal shall lie" from any finding of the Civil Court. This bar is only against the appeal being filed against the finding directly but as no appeal is provided against the ultimate decision of the Criminal Court, the effect of it is that the finding cannot be interfered with by way of an appeal at any stage. It being a civil proceeding a revision under Section 115 of the Code of Civil Procedure also would have been maintainable against the finding if this provision had not been there. A revision is no doubt maintainable against the ultimate order of the Magistrate passed in conformity with the decision of the Civil Court under the provisions of the Code of Criminal Procedure, it being the order of a Criminal Court, but sub-section (ID) has been so drafted that it prohibits the revising of the finding of the Civil Court even though to use the phrase of Ramaswami, J. it might have "merged in the decision of the Magistrate". It provides "nor shall any review or revision of any such finding be allowed." This is a clear prohibition against the finding being reviewed or revised not only in a proceeding arising out of specific application for review or revision, but in any manner whatsoever. Reading the sub-section as a whole we find that while there is a bar in that provision against the filing

¹³ AIR 1966 SC 1888

of an appeal against the finding itself, the bar against review or revision is not only against an application for review or revision being filed but is against the finding being reviewed or revised in any manner whatsoever. The words used "nor shall any review or revision of any such finding be allowed" are of wider import than the words "no appeal shall lie; they are not equivalent to "no review or revision shall lie", but they connote an absolute prohibition against any interference with the finding in any manner whatsoever. In case the bar against interference had been meant to be restricted to an application in review or revision only against that finding directly, the words would have been, "no appeal, review or revision shall lie from any finding of the Civil Court given on a reference under this section" rather than in the form in which it has been provided under the sub-section by not treating "review or revision" at par with "appeal".

13. The majority decision of the Full Bench of the Patna High Court in AIR 1963 Patna 243, however, fails to notice, we say so with respect, this distinction in the wordings of the sub-section and its reasoning on page 246 of the report proceeds on the assumption as if this sub-section contained the words that no appeal, review or revision shall lie against such finding.

14. Obviously, the intention of the Legislature in enacting the said sub-section was to attach finality to the finding recorded by the Civil Court on question of possession referred to it under subsection (1) of Section 146 by a Magistrate seized of a case under Section 145 so far as those proceedings are concerned and the Magistrate was enjoined under sub-section (I-B) of Section 146 to dispose of those proceedings in conformity with the finding of the Civil Court, that order, of course, being subject to any subsequent decision of a court of competent jurisdiction as provided in sub-section (I-E). This object was achieved by providing inter alia in sub-section (I-D) that no revision of the finding will be allowed which in our opinion clearly means that the finding shall not be interfered with by a superior court exercising revisional jurisdiction under

Section 435 or 439 of the Code even when it chooses to call for the record to look to the correctness, legality or propriety of the final order passed by the Magistrate disposing of the proceedings under Section 145. In this view of the matter it was not necessary, as suggested by the Full Bench of Patna High Court, to make an amendment in Sections 435 and 439 so as to provide specifically that an order passed by the Magistrate under sub-section (I-B) of Section 146 disposing of the proceedings under Section 145 in conformity with the finding of the Civil Court shall not be open to revision. It is not inconceivable that such a final order passed by the Magistrate even though in conformity with the finding of the Civil Court may be open to challenge on other grounds. After a finding on the question of possession has been returned by the Civil Court in favour of one of the parties, it is possible that the parties may come to an amicable settlement in variance with that finding and inform the Magistrate that there was no longer any likelihood of breach of peace in regard to the subject of the dispute in those proceedings, but the Magistrate instead of withdrawing the attachment under the proviso to sub-section (1) of Section 146 chooses to pass a final order under sub-section (I-B) of the said section disposing of the proceedings in conformity with the finding of the Civil Court. In such a case, the aggrieved party may like to challenge that order of the Magistrate by making an application for revision without assailing the finding of the Civil Court. Such a revision application under Section 435 of the Code shall lie against that order. If, however, the only ground of challenge to the Magistrate's order which has been passed in conformity with the finding of the Civil Court is that the finding itself suffers from some illegality, impropriety or incorrectness, the revision will be liable to be rejected in view of the provisions contained in the said sub-section (I-D).

15. We are therefore of the opinion that the view so far adopted by this Court except in the case of 1967 All WR (HC) 448 is the correct view and we respectfully differ from the contrary view taken by the Patna High Court in AIR 1963 Patna 243 followed in AIR 1963 Patna 320 and approved of in AIR 1969 Assam 81 based on the observations in AIR 1960 Madras 169.

16. We accordingly hold that the revision is not maintainable and we dismiss the same. Revision dismissed.