

PUNJAB AND HARYANA HIGH COURT

Gurdev Singh

Vs

State of Punjab

(Mehar Singh, J.)

27.08.1974

JUDGEMENT

Mehar Singh, J.

- (1.) ON a report from the Station House Officer, Police Station Rajpura, proceedings under Section 145 of the Criminal Procedure Code were initiated against three parties, namely, Tej Kaur and Shamsher Kaur, Gurdev Singh and Sukhdev Singh, and Surjit Singh. In these proceedings preliminary order was passed by the Sub-Divisional Magistrate, Rajpura, on 10th October, 1973, and the land measuring 94 bighas 13 biswas which was the subject-matter of this dispute was attached, as there was an apprehension of breach of the peace. It was directed that the Naib Tehsildar, Rajpura, should take possession of the land and manage it by auctioning it on cash payment. Gurdev Singh, one of the parties in this dispute, has now filed a petition under Article 227 of the Constitution read with Section 482 of the Criminal Procedure Code for quashing these proceedings.

(2.) ON behalf of the petitioner two main grounds have been urged. It is firstly pointed out that the case was adjourned six times between November 1973 and June 1974 without taking any proceedings and that this amounted to an abuse of the process of the Court. The second argument canvassed before me is that in the preliminary order the Sub-Divisional Magistrate has not stated the grounds on the basis of which he felt satisfied that a dispute likely to cause a breach of the peace existed. From the affidavit of Surjit Singh, one of the respondents, it emerges that by the preliminary order the parties were directed to appear on 15th November, 1973 and to file their written statements, but before this could be done a stay order was obtained from the Additional Sessions Judge, Patiala, on 3rd November, 1973. This order was obtained in a revision petition filed by the petitioner. Subsequently Tej Kaur and Shamsher Kaur who were also party to these proceedings filed another revision petition and the case could, therefore, not proceed till 26-4-1974. From the affidavit of Surjit Singh it emerges that the delay in the proceedings was to a large extent caused by the parties obtaining stay orders from the Court of the Additional Sessions Judge, and in this situation the fact that the proceedings could not be conducted expeditiously

would not furnish a ground for quashing the proceedings. The second contention needs more serious consideration. On the basis of the observations in *Bisse Gowda v. State of Mysore* 1969 Cri LJ 1170 (Mys), it was argued that a mere statement in the preliminary order under Section 145 (1) of the Criminal Procedure Code by the Magistrate that he was satisfied from the police report that a dispute was likely to cause a breach of the peace was not enough and that he must state grounds of his being so satisfied, which alone entitled him to make such an order. In the above case it was held that non-compliance in this respect would not only render the preliminary order without jurisdiction but would also vitiate the entire subsequent proceedings. The same view was taken in *Sri Ram v. The State* AIR 1958 Punj 47 : 1958 Cri LJ 215 wherein the following observations were made: Before a preliminary order can issue under Section 145 (1) the Magistrate has to satisfy himself from a police report or other information that a dispute likely to cause a breach of the peace exists concerning the land etc. , and after doing so, he is to make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned, to attend his Court and to put in written statements of their respective claims. The legislature has put in the forefront the satisfaction of the Magistrate as to the likelihood of the existence of a breach of the peace. These provisions are mandatory. Omission to observe them vitiates the entire proceedings as these are the pre-requisites or sine qua non for instituting proceedings under Chapter 12 of the Code. The omission also occasions a failure of justice, as mentioned in Section 537. Criminal P. C. The ratio of the above two decisions no doubt supports the contention of the learned Counsel for the petitioner, but as it is not in accordance with the view expressed by the Supreme Court in *R. H. Bhutani v. Miss Mani, J. Desai*¹ the proceedings cannot be quashed on its basis. In Bhutani's case one of the reasons on which the High Court interfered with the order of the Magistrate was that he had failed to record in his preliminary order the reasons for his satisfaction. In this respect it was observed as follows: The section, no doubt, requires him to record reasons. The Magistrate has expressed his satisfaction on the basis of the facts set out in the application before him and after he had examined the appellant on oath, That means that those facts were prima facie sufficient and were the reasons leading to his satisfaction. On the basis of this it would be safe to conclude that if the facts were stated in the police report and those facts were sufficient to form the opinion it could be inferred that those provided the reasons leading to the Magistrate's satisfaction. It may also be mentioned that so far as Sri Ram's case (supra) is concerned the observations were made in a case where no preliminary order at all had been passed. In *Sri Chand v. Dhundi Ram Mathuri*² while considering this aspect it was observed that the omission by a Magistrate to record in the preliminary order the grounds of his satisfaction would not divest the Magistrate of jurisdiction but would only be an irregularity curable by Section 537 of the Criminal Procedure Code. The legality of the order under Section 145 of the Criminal Procedure Code was also considered in *Depu Kachari v. Padma Kanta Barua*³ In this case one of the grounds on which the order of the Sub-Divisional Magistrate under Section 145 was sought to be quashed was that the Magistrate had not stated the grounds of his satisfaction in the preliminary order. In this order the Magistrate had stated that he was satisfied as to the existence of a dispute which was likely to cause a breach of the peace. The order in fact was based on the report of the police to which a reference had

been made in the order. On the basis of the observations of Calcutta High Court in *Khosh Mahomed v. Nazir Mahomad*⁴ it was observed that a reference in the preliminary order to the police report which sets out the grounds which justify action under Section 145 was sufficient compliance with the provisions contained in Sub-section (1) of Section 145 of the Criminal Procedure Code. This view is in consonance with the view taken by the Supreme Court in Bhutani's case 1969 Cri LJ 13 (SC) and supports the argument of the learned Counsel for the respondents that the present order was not vitiated merely because the grounds were not repeated in the preliminary order though they were mentioned in the police report. In view of this. I find no merit in the second argument either. The revision petition consequently fails and is dismissed. ;

Cases Referred.

11968 Cri AR 223 : 1969 Cri LJ 13 (SC)

2MANU/up/0019/1955,, AIR1955 All 56 , 1955 Crilj178

3AIR 1952 Assam 185 : 1952 Cri LJ 1693

4(1906) ILR 33 Cal 352 : 2 Cri LJ 637