Prem Singh and others v. Deputy Custodian-General, Evacuee Property and others

Das, C. J.

place, the appellants are bigger allottees, and if anybody were to be disturbed, it must be the bigger allottees and not the smaller. Reference is made to page 84 of the Land Resettlement Manual and it is claimed that this rule has laid down a rule of equity of general application. In the next place, the appellants and the respondents Nos. 3 and 4 both come from Rawalpindi and they can be re-settled in Ratauli only on sanction given by Financial Commissioner and reference is made to page 82, paragraph 7 of of Chapter (iv) which lays down the principles of allocation. It is pointed out that the allotment of land in Ratauli in favour of the appellants were made by the Director-General and were never sanctioned by the Financial Commissioner. Further the Rehabilitation authorities charged with the duty of making allotments have exercised their discretion and for cogent reasons stated in the Deputy Custodian General's order the allotment to respondents Nos. 3 and 4 were not disturbed. There is no reason to interfere with that decision on an application under Article 226. None of the prerequisities for the issue of a writ of *certiorari* exists and the claim of the appellants as against the respondents Nos. 3 and 4 was, therefore, rightly rejected. It was not a proper matter to be decided on a petition under Article 226.

For reasons stated above this appeal must be dismissed with costs.

REVISIONAL CRIMINAL.

Before Tek Chand, J.

FAQIR CHAND AND OTHERS,—*Petitioners*

versus

BHANA RAM, AND OTHERS,—*Respondents.*

Criminal Revision No. 342 of 1957.

1957

June, 19th

Code of Criminal Procedure (V of 1898)—Section 145—Inquiry under—Nature and scope of—"Satisfied"—Meaning of—Satisfaction—Nature of—Material forming basis of

satisfaction—Whether to be stated—Refusal of the Magistrate to receive evidence—Whether justified.

Held, that the intention of section 145 of the Code of Criminal Procedure is to provide a speedy remedy for the prevention of a breach of the peace arising out of a dispute in respect of immovable property. Before making a preliminary order, the enquiry, which is contemplated, may not be detailed. The enquiry contemplated is for purposes of satisfaction of the Magistrate, which may be either from a police report or other information suggesting the necessity for taking action. The purpose of section 145 and allied provisions is to prevent the immediately apprehended breach of the peace which purpose in all likelihood may be defeated by a prolonged enquiry extending over several hearings. If for any reason the enquiry is delayed and a preliminary order is not passed, the whole object of this section may be frustrated.

Held further, that the word "satisfied" is a term of considerable expansiveness. The term 'satisfied' has been understood to mean, free from anxiety, doubt, perplexity, suspense or uncertainty. In this context it is synonymous with, "convince the understanding; or "convince beyond a reasonable doubt". In order that a Magistrate be relieved of all doubts or uncertainty and for his mind to be reasonably certain or free from doubt, it is necessary that he should permit parties concerned to place before him sufficient material, justifying initiation of the proceedings.

Held also, that satisfaction for purposes of judicial determination must depend on sufficiency of facts placed before the Magistrate. No doubt the satisfaction is to be of the Magistrate resting on the discretion vested in him; but such discretion is not arbitrary and must be a sound judicial discretion, and which should be regulated according to known rules of law. In its nature, it is more a legal than a personal discretion. It is essentially objective in its character, i.e., depending on the facts and materials before the Magistrate rather than subjective and resting upon his caprice or predilection. The Magistrate must in his order be in a position to present clear and rational grounds capable of being estimated as having a reasonable nexus between the real facts and the apprehended disturbance of peace. *A fortiori,* it follows that the Magistrate who is

required by the statute, to state the grounds of his satisfaction, as to the existence of the likelihood of a breach of the peace, must permit to be produced the material on the basis of which he has to express his satisfaction. If the Magistrate were allowed entirely to have a free hand, uncontrolled and unregulated by any rules of logic or equity, the result would be that the grant or refusal of initiatory order would depend upon his caprice or whims. The law, while giving to the Magistrate ample latitude, insists that in his preliminary order, the Magistrate must set out the grounds which are the basis of his satisfaction. Conversely, it follows that the reasons on the basis of which he declines to pass the initiatory order must also be stated, otherwise it will become impossible for the Court of revision to appraise the soundness or justification for his order.

Emperor v. Munnulal (1), *Nittyanand Roy v. Paresh Nath Sen* (2), *Jagomohan Pal* v. *Ram Kumar Gope* (3), followed. *Biswanath Mahapatra* v. *Shivanand Saraswati* (4), *K. C. Sreemanavedava Raju* v. *Parapravan Naidu* (5), *Shiamsundar Lal Jain* v. *Sheo Parshad* (6), and *Hatemali Chaprasi* v. *Osimuddi* (7), distinguished.

Case reported under section 438 of the Criminal Procedure Code, by Shri Gulal Chand Jain, Additional Sessions Judge, Jullundur, with his letter No. 87-J/J.R., dated 7th March, 1957, for revision of the order of Shri Amar Singh, Bhatia, Magistrate, 1st Class, Jullundur, dated 18th June, 1956, dismissing their complaint filed under section 145, Criminal Procedure Code, against the respondents.

The facts of the case are that Faqir Chand and Durga Dass made an application to Shri Amar Singh, Magistrate, 1st Class, Jullundur, under section 145 of the Code of Criminal Procedure, complaining of apprehension of breach of peace as a result of a dispute that existed between the Balmikis and Ad Dharmis of the village with respect to a vacant piece of land in the village. The petition was made on 18th June, 1956, and the learned Magistrate

(1) A.I.R. 1935 Nagpur 78
(2) I.L.R. 32 Cal. 771
(3) I.L.R. 28 Cal. 416
(4) A.I.R. 1921 Pat. 308
(5) A.I.R. 1920 Mad. 566
(6) A.I.R. 1953 All. 505
(7) A.I.R. 1924 Cal. 544

recorded the statement of Faqir Chand in which he reiterated what had been stated in the petition. The learned Magistrate at once proceeded to judgment and passed an order dismissing the complaint holding that he was not satisfied that the dispute likely to cause breach of peace existed. The petitioners have come up to this Court with a prayer for revision of the order passed by the Magistrate and for ordering further enquiry into the matter.

The proceedings are forwarded to the High Court for revision on the following grounds:—

The procedure adopted by the learned Magistrate in disposing of the application made by the petitioners to him is illegal and unwarranted by law. It is well established that a Magistrate has no jurisdiction to make an order under section 145 of the Code of Criminal Procedure or refuse to make an order under this provision of law without any evidence being adduced before him. It is not open to a Magistrate to refuse to take evidence on behalf of a party merely on the ground that he was satisfied on the written statements of the parties that a certain allegation was not the correct one. In this connection reference may be made to Biswanath Mahapatra *v.* Shivanand Saraswati (1), Hatemali Chaprasi *v.* Osimuddi (2), *and* Shiamsundar Lal Jain *v.* Sheo Parshad (3). *In* K. C. Sreemanavedava Raju *v.* Parapravan Naidu (4), *it was held that where a Magistrate declines to receive oral evidence in an enquiry under section 145, Cr. P.C., his proceedings can be revised by the High Court. In the present case not only that the Magistrate declined to receive oral evidence but he even declined to issue notice to the respondents. The application has been tried by him in a very unsatisfactory manner. I, therefore, recommend that the order passed by the Magistrate may be quashed and further enquiry into the matter may be ordered.*

B. D. MEHRA, for Petitioners.

H. L. MITAL, for Respondent.

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(1) A.I.R. 1921 Pat. 308.
(2) 1924 Cal. 544
(3) A.I.R. 1953 All. 505
(4) A.I.R. 1920 Mad. 566

ORDER OF THE HIGH COURT

Tek Chand, J. TEK CHAND, J.—The Additional Sessions Judge, Jullundur, has sent up this case with a recommendation that the order passed by Shri Amar Singh Bhatia, Magistrate, 1st Class, Jullundur, dated 18th of June, 1956, dismissing the complaint filed in his Court unded section 145, Criminal Procedure Code, against the respondent may be quashed and further enquiry into the matter may be ordered. Two persons Faqir Chand and Durga Das applied under section 145, Criminal Procedure Code, to the Court of the Magistrate, 1st Class, Jullundur, complaining that they apprehended breach of the peace as a result of a dispute between the Balmikis and the Ad Dharmis of Kartarpur, Tehsil and District Jullundur, with respect to the vacant piece of land. The petition was presented on the 18th of June, 1956, and after recording the statement of Faqir Chand petitioner the Magistrate at once proceeded to judgment and made a sketchy order dismissing the complaint being of the view that he was not satisfied that a dispute likely to cause a breach of peace existed. Against the order of dismissal the petitioner submitted a revision petition to the Additional Sessions Judge praying that further enquiry should be ordered. The Additional Sessions Judge while forwarding proceedings to this Court for revision, is of the view that the Magistrate acted illegally in disposing of the application under section 145 without recording any evidence. The Additional Sessions Judge is of the view that it is not open to a Magistrate to refuse to take evidence on behalf of a party merely because he thought he was satisfied from the written statements of the parties that the allegation in the complaint was not a correct one. The Additional Sessions Judge has referred to *Biswanath Mahapatra* v. *Shivanand Sarsawati* (1), *Hatemali*

(1) A.I.R. 1921 Pat. 308.

Chaprasi v. *Osimuddi* (1), *Shiamsunder Lal Jain* v. *Sheo Parshad* (2) and *K. C. Sreemanavedava Raju* v. *Parapravan Naidu* (3), in support of his view. In this case the Magistrate not only did not receive the oral evidence but refused to issue notice to the respondent.

Mr Bhagwan Dass Mehra, appearing on behalf of the petitioner has supported the recommendation of the Additional Sessions Judge, which is being opposed by Shri H.L. Mittal, who appeared for the respondents. Under section 145(1), Criminal Procedure Code, when a District Magistrate, Sub-Divisional Magistrate, or a Magistrate of the first class is satisfied, from the police report or other information that a dispute likely to cause a breach of the peace exists concerning any land, etc., within the local limits of his jurisdiction, he shall make an order in writisg, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

The intention of the section is to provide a speedy remedy for the prevention of a breach of the peace arising out of dispute in respect of immovable property. Before making a preliminary order, the enquiry, which is contemplated, may not be detailed. The enquiry contemplated is for purposes of satisfaction of the Magistrate, which may be either from a police report or other information suggesting the necessity for taking action. The purpose of section 145 and allied provisions is to prevent the immediately apprehended breach of the peace which purpose in all likelihood may be defeated by a prolonged enquiry

(1) A.I.R. 1924 Cal. 544
(2) A.I.R. 1953 All. 505
(3) A.I.R. 1920 Mad. 566

Faqir Chand and others v. Bhana Ram and others

Tek Chand, J.

extending over several hearings. If for any reason the enquiry is delayed and a preliminary order is not passed, the whole object of this section may be frustrated. It is only after a preliminary order under sub-section (1) is passed that further proceedings can be initiated. The Magistrate, however, has to state in the preliminary order the grounds for his being satisfied as to the likelihood of a breach of the peace. The provision as to stating the grounds of the Magistrate being satisfied as to there being an apprehension of a breach of the peace is mandatory. Despite the fact that section 145 is adapted to cases of urgency, it is not possible to lay down any hard and fast rule as to the sufficiency of the material which has to be produced before a Magistrate for his satisfaction. This must vary *ex necessitate rei* with the facts of each case and in accordance with the particular exigencies. No doubt after the entire material is placed before a Magistrate he alone has to judge whether he should exercise his discretionary powers, but the question in this case is, whether it is open to the Magistrate to exclude the very material which a party wants to place before him for purposes of his satisfaction. If the Magistrate could be deemed to have power under section 145 to refuse the reception of the necessary data, the danger would be, that recourse to section 145 could be effectively prevented because of the Magistrate's refusal to place on the record facts, on the strength of which, an apprehension of a breach of the peace could be reasonably inferred. Once, there is information placed before the Magistrate, the High Court would not go into the sufficiency of the information for purposes of the satisfaction of the Magistrate. The initiatory order under section 145(1) depends on the satisfaction of the Magistrate alone. It is, however, not possible to stretch the Magistrate's discretionary power further than that. I cannot subscribe to the view, that it is open to the Magistrate

first to refuse to receive information and then to decline to pass a preliminary order on the ground that he is not satisfied as to the existence of a *prima facie* case disclosing a reasonable apprehension of the breach of the peace.

The word 'satisfied' is a term of considerable expansiveness. The term 'satisfied' has been understood to mean, free from anxiety, doubt, perplexity, suspense or uncertainty. In this context it is synonymous with "convince the understanding"; or "convince beyond a reasonable doubt". In order that a Magistrate be relieved of all doubts or uncertainty and for his mind to be reasonably certain or free from doubt, it is necessary that he should permit parties concerned to place before him sufficient material, justifying initiation of the proceedings.

The word 'satisfied' has of course several other technical meanings some of which are of quite diffusive significance. In relation to the claims or debts, contracts, mortgages and executions, 'satisfied' is equivalent to discharged, extinguished, paid, released etc., but this is obviously not the sense in which this word is understood in section 145.

Satisfaction for purposes of judicial determination must depend on sufficiency of facts placed before the Magistrate. No doubt the satisfaction is to be of the Magistrate resting on the discretion vested in him; but such discretion is not arbitrary and must be a sound judicial discretion, and which should be regulated according to known rules of law. In its nature, it is more a legal than a personal discretion. It is essentially objective in its character, i.e., depending on the facts and materials before the Magistrate rather than subjective and resting upon his caprice or predilection. Before passing the initiatory order and in order to confer jurisdiction there should be

Faqir Chand and others
v.
Bhana Ram and others

Tek Chand, J.

sufficient material justifying apprehension of a breach of the peace, which was the sole purpose before the mind of the Legislature. The intention underlying the procedure prescribed under this section is prevention of a breach of the peace. The other elements which must co-exist are, that the dispute must be concerning actual possession of land or water situated within the local jurisdiction of the Magistrate. In order to effect this puspose a Magistrate is not in any way restricted to the materials he might make use of for basing his conclusion, except of course, that he is bound to satisfy himself, that there are reasonable grounds as to the imminence of a breach of the peace. The Magistrate must in his order be in a position to present clear and rational grounds, capable of being estimated as having a reasonable nexus between the real facts and the apprehended disturbance of peace. It is true that the moment it is found that there is no likelihood of a breach of the peace, the jurisdiction of the Magistrate ceases and, therefore, it is a very important decision for the Magistrate to make whether there is likelihood of a breach of the peace. He cannot refuse to receive material which a party may want to place for persuading him to pass a preliminary order. In *Emperor* v. *Munnulal* (1) it was emphasized that the provisions of sub-section (1) of section 145 must be observed in spirit and the making of a preliminary order should not be allowed to lapse into a mere routine, as if it were the filling up of a printed form. In the case of a police report made to a Magistrate, suggesting initiation of proceedings under this section, there must be stated grounds for apprehension of a breach of the peace in order to enable the Magistrate to form his judgment. In *Nittyanand Roy.* v. *Paresh Nath Sen* (2), the Magistrate had omitted in the initiatory order to state the

(1) A.I.R. 1935 Ntg. 78.
(2) I.L.R. 32 Cal. 771.

grounds for his being satisfied, as to the likelihood of a breach of the peace, and there was no record of the information obtained by him in the course of that enquiry. The order of the Magistrate in the circumstances was set aside as it was held that in a case initiated upon a police report or other information, which had been reduced to writing, reference could be made to the materials upon which the Magistrate acted, to ascertain whether there were in fact grounds upon which he might have acted. It was the duty of the Magistrate to state the grounds upon which he was satisfied that there was likelihood of a breach of the peace. *A fortiori*, it follows that the Magistrate who is required by the statute, to state the grounds of his satisfaction, as to the existence of the likelihood of a breach of the peace, must permit to be produced the material on the basis of which he has to express his satisfaction. If the Magistrate were allowed entirely to have a free hand, uncontrolled and unregulated by any rules of logic or equity, the result would be that the grant or refusal of initiatory order would depend upon his caprice or whims. The law, while giving to the Magistrate ample latitude, insists that in his preliminary order, the Magistrate must set out the grounds which are the basis of his satisfaction. Conversely, it follows that the reasons on the basis of which he declines to pass the initiatory order must also be stated otherwise it will become impossible for the court of revision to appraise the soundness or justification for his order. In *Jagomohan Pal* v. *Ram Kumar Gope* (1), a Division Bench of Calcutta High Court expressed the view that the order of a Magistrate instituting proceedings under section 145 of the Code of Criminal Procedure should set out the grounds on which he is satisfied that a dispute likely to cause a breach of the peace existed, and the parties to the proceedings

(1) I.L.R. 28 Cal. 416.

Faqir Chand and others
v.
Bhana Ram and others

Tek Chand, J.

should be given an opportunity of adducing their evidence.

In this case it is obvious that the Magistrate has not exercised a proper discretion, in refusing the applicant to place material before him, from which, he could satisfy himself as to the existence of the grounds indicating imminence of the breach of the peace. It has been suggested by the learned counsel for the respondent that in fact there has been no breach of the peace, but that, to my mind, is a fortuitous circumstnces in a particular case and on its basis, it cannot be suggested that the Magistrate is free to receive or refuse material which an applicant apprehending a breach of the peace might like to place for his satisfaction.

The learned Additional Sessions Judge has referred to four rulings which to my mind are not in point. In *Biswanath Mahapatra* v. *Shivanand Saraswati* (1), all that was stated was, that the Magistrate, in a proceeding under section 145 of the Code of Criminal Procedure has jurisdiction to curtail the number of unnecessary witnesses upon the ground that their examination would delay and possibly defeat the ends of justice. But this is not the proposition that throws any light upon the question referred to this Court. In *K. C. Sreemanavedava Raju* v. *Parapravan Naidu* (2), it was held that where a Magistrate declines to receive oral evidence in an enquiry under section 145, his proceedings can be revised by the High Court. But this proposition again does not help as the enquiry in that case commenced after the proceedings under section 145(1) had been initiated. In the case before me the Magistrate has declined to initiate proceedings. In *Shiamsunder Lal Jain* v. *Sheo Parshad* (3), also proceedings under

(1) A.I.R. 1921 Pat. 308
(2) A.I.R. 1920 Mad. 566
(3) A.I.R. 1953 All. 505

section 145(1) had been initiated and it was at a later stage while instituting enquiry as to possession under subsection (4) that the Magistrate had refused to take evidence on behalf of a party. The case reported in *Hatemali Chaprasi* v. *Osimuddi* (1), is an authority for the proposition that a Magistrate has no jurisdiction to make an order under section 145 without any evidence being adduced before him. But in the brief judgment, there is no indication as to the stage at which the proceedings were, and I cannot consider this case to be an authority for the proposition contended for by the learned Additional Sessions Judge.

Mr. Mittal has referred me to *Jhanda Ram* v. *Topan Ram* (2), which is not a ruling in point. All that it lays down is that section 145 does not require the Magistrate to give a finding in his final order that there is likelihood of a breach of the peace because after he had made an order in writing under subsection (1) the only matter which he has to determine is the question of the possession of the disputed property. This ruling does not decide the question that has arisen in this case. In *Velur Devasthanam* v. *Sambandamurthi* (3), a single Judge of that High Court expressed the view that when a Magistrate comes to the conclusion that there is no longer any apprehension of a breach of the peace, it is his duty to drop further proceedings under section 145 leaving it open to the parties to resort to the appropriate remedies in a Civil Court and this can be done at any stage. It is not obligatory for him to take evidence before dropping proceedings, and need not give an opportunity to the parties to establish the contrary. In this case a preliminary order had been passed under section 145 (1) and then the party in response to the preliminary

(1) A.I.R. 1924 Cal. 5442.
(2) A.I.R. 1922 Lah. 454.
(3) A.I.R. 1952 Mad. 531.

Faqir Chand and others v. Bhana Ram and others

Tek Chand, J.

order came and satisfied the Court that there was no likelihood of the breach of the peace. To the same effect are two other authorities of the Madras High Court reported as *Gothipati Suryanarayana* v. *Shree Rajah Ankineed Prasad Bahadur* (1), *Donapudi Narasayya and another* v. *Chinguluri Venkiah and others* (2), These authorities do not present solution to the question now before me. I am afraid that the authorities cited at the Bar cannot be relied upon for justifying or setting aside the order of the Magistrate.

For the reasons stated in the earlier part of this judgment I agree with the learned Additional Sessions Judge that the Magistrate was in error in declining to receive oral evidence and that he did not appreciate the real significance of the duties cast on a Magistrate while disposing of the matter arising under section 145(1).I set aside the order of the Magistrate and direct that the applicant may be enabled to place material upon the record in support of his application under section 145, Cdiminal Procedure Code, before the Magistrate comes to the conclision as to the desirability of passing or refusing the preliminary order.

Parties, through their counsel, are directed to appear before the Magistrate on 5th of July, 1957.

CRIMINAL APPELLATE.

Before Mehar Singh and Tek Chand, JJ.

HAZARA SINGH,—*Convict-Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 385 of 1957.

1957

June, 24th

Indian Penal Code (XLV of 1860)—Section 84—Insane Person—Exemption from criminal liability—Basis of—Insanity—Definition of—Criminal Liability—Immunity

(1) I.L.R. 47 Mad. 713.
(2) I.L.R. 49 Mad. 232.