

REVISIONAL CRIMINAL.

Before Bhide J.

SHRIMATI PREM KAUR AND ANOTHER

(ACCUSED) Petitioners

versus

BENARSI DAS (COMPLAINANT) AND THE CROWN
Respondents.

1933

Jan. 31.

Criminal Revision No. 2 of 1933.

Criminal Procedure Code, Act V of 1898, Sections 88, 145: Disputes as to an Oil Mill and moveables on the premises—'Land and Water'—meaning of—Attachment—Appointment of a Receiver—Emergency—Magistrate's discretion.

Held, that proceedings, under Section 145 of the Criminal Procedure Code, can only be taken in respect of a dispute concerning 'land and water,' and the section only gives power to attach the subject of such dispute in case of emergency, but the expression 'land and water' includes buildings, markets, fisheries, crops and other produce of land and the rents and profits of any such property. Moveable property as such would not, therefore, ordinarily come within the purview of the section, unless it is in the shape of crops or other produce of land or rents and profits of the property in dispute.

But, where the dispute relates not merely to a factory building but also to valuable machinery, coal and other moveables on the premises, the police officers appointed to take charge of the factory are entitled to retain for the time being the custody of the moveable property, subject to the final order of the Magistrate.

K. Kochunny v. P. C. Manavikrama Rajah Ayyal (1), followed.

Dhani Ram v. Bhola Nath (2), distinguished.

The primary object of proceedings under section 145, Criminal Procedure Code, is to prevent a breach of peace, for which purpose a mere restraint on alienation would generally be of no use. The Code does not contemplate a prohibitory order as the *only* mode of attachment. The

(1) (1912) 13 Cr. L. J. 222.

(2) 23 P. R. (Cr.) 1902.

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right to attach property carries with it the right to take necessary steps for its custody and management and a Receiver can be appointed for the purpose under Section 145, just as he can be appointed under Section 146.

Gopala Aiyar v. Krishnasawmy Iyer (1), and *Srinavasa Pillay v. Sathayappa Pillay* (2), followed.

Mewa Lal v. Emperor (3), not followed.

Held also, that whether or not the case is one of emergency is a matter within the discretion of the Magistrate and the action taken by him for maintenance of the peace cannot be lightly interfered with, especially where the conduct of the petitioners has been such as to cause reasonable apprehension of damage to the property or injury to persons entitled to enter the property.

Petition for revision of the order of Mr. A. V. Askwith, District Magistrate, Lahore, dated the 22nd December, 1932, affirming the orders of Thakar Vikram Singh, Magistrate, 1st Class, Lahore, dated the 10th December 1932, (1) attaching the premises of Kuldip Oil Mills with all property therein and ordering appointment of a Receiver, if necessary, and (2) calling upon the accused-petitioners to show cause why they should not be required to execute bonds to keep the peace.

C. BEVAN-PETMAN and HARNAM SINGH, for Petitioners.

MANOHAR LAL, JAGAN NATH, AGGARWAL, and RAM LAL ANAND, for Complainant; and C. H. CARDEN-NOAD, Government Advocate, for the Crown, Respondents.

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BHIDE J.—This is a petition for revision arising out of proceedings under section 145, Criminal Procedure Code, relating to a dispute about the possession

(1) (1920) 21 Cr. L. J. 73, 76. (2) (1912) 13 Cr. L. J. 295.

(3) (1918) 44 I. C. 41.

of the Kuldip Oil Mills, belonging to the respondent *Rai Bahadur* Benarsi Das. The petition under section 145, Criminal Procedure Code, was filed by Benarsi Das and the respondents to that petition were *Mussammat* Prem Kaur, who is said to have been his mistress for a number of years, Khazan Singh her adoptive father and his four sons named Kartar Singh, Gurbux Singh, Prem Singh and Mohinder Singh. Kartar Singh was working as manager of the Kuldip Oil Mills. Recently disputes arose between Benarsi Das and these persons and they left his house. Subsequently, they are said to have beaten and forcibly turned out Benarsi Das when he went to the Mills. This has led to these proceedings under section 145, Criminal Procedure Code. The learned Magistrate is holding an enquiry but this petition for revision has been filed by *Mussammat* Prem Kaur and Kartar Singh on the ground that the Magistrate has acted wholly without jurisdiction and it would be unjust and sheer waste of time to allow the proceedings to continue.

In support of the above ground, Mr. Bevan-Petman has urged on behalf of the petitioners that (i) even on the facts admitted by the respondent Benarsi Das in his petition, the learned Magistrate had no jurisdiction to take any proceedings under section 145, Criminal Procedure Code, (ii) that there was no emergency justifying the order of attachment passed by him, (iii) that the manner in which the property was attached was illegal and (iv) finally that the attachment of certain moveable property on the premises of the Mills was, at any rate, *ultra vires*.

As regards the first point, stress was laid on the statement in para. 11 of the petition of Benarsi Das

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under section 145, Criminal Procedure Code, to the effect that the opposite party were in possession of the Mills. This statement, however, must be read along with the other allegations of facts in that petition. These allegations show that Kartar Singh was in possession merely as a manager and his possession must be deemed to have been on behalf of Benarsi Das, the owner of the Mill. This point was not seriously disputed by the learned counsel for the petitioners, but he contended that the other petitioners were, at any rate, in possession of their own rights. I do not, however, see that there is any force in this contention. Out of these Khazan Singh is the father of Kartar Singh, while Gurbux Singh, Prem Singh and Mchindar Singh are his brothers. They were apparently living together. It is not suggested that they had any sort of claim to the Mill. It is said that Benarsi Das owed Rs. 60,000 or so to these persons, but it is not alleged that the Mill was mortgaged to them or any sort of lien was created by any document. As regards *Mussammatt* Prem Kaur, it appears that she left the house of Benarsi Das and went to live with Khazan Singh, her adoptive father, only about the 27th November, 1932, *i.e.* about a couple of weeks before the petition under section 145, Criminal Procedure Code, was lodged. According to the allegations in that petition the aforesaid persons beat the *munim* of Benarsi Das on the 4th December last and refused to allow him to examine the accounts. The next day, they gave a similar treatment to Benarsi Das himself. It was, therefore, apparently on these dates that Kartar Singh, etc. are alleged to have, by force, converted their possession which was originally on behalf of Benarsi Das, into possession adverse to him. If these allegations be correct, the possession thus obtained within two months before the

petition will be of no avail (*vide* proviso to sub-section 4 of section 145, Criminal Procedure Code). After carefully considering the allegations in the petition, and the statements before the learned Magistrate, I am satisfied that there was a *prima facie* case justifying proceedings under section 145, Criminal Procedure Code.

As regards the necessity of attachment, the Magistrate considered the case to be one of emergency. The matter was one within his discretion and the action taken by him for maintenance of peace cannot be lightly interfered with. It has been urged that Benarsi Das was lying injured in the hospital and hence there could be no emergency. This seems to me a preposterous position to take up in view of the fact that Kartar Singh, etc. are alleged to have been themselves responsible for the injuries, which necessitated Benarsi Das's detention in the hospital for treatment. Even if Benarsi Das was unable to go to the Mills, he was entitled to send his servants there to look after his interests. In view of the treatment given to Benarsi Das himself, there was obviously danger of a breach of peace. Further, the conduct of Kartar Singh and others also raised reasonable apprehension of damage to the Mills and the other property of Benarsi Das connected therewith. I see, therefore, no reason to hold that there was no such emergency at all, as could justify the action of the learned Magistrate under the law.

The learned Magistrate has attached the Mills through the Police, who are now in possession. The learned counsel for the petitioners urged that the learned Magistrate could only attach property in the

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manner provided for by the Code of Civil Procedure, *i.e.* by issue of an order prohibiting alienation of the property. In support of this contention the learned counsel drew my attention to a ruling of the Patna High Court reported as *Mewa Lal v. Emperor* (1). The view taken by Mullick J. in that ruling has, however, been dissented from by Burn J. in a later ruling of the Madras High Court reported as *Gopala Aiyar v. Krishnasawamy Iyer* (2), and I respectfully concur in the latter view. As pointed out by Burn J. in his judgment, a mere restraint on alienation would generally be of no use in preventing a breach of peace—which is the primary object of proceedings under section 145, Criminal Procedure Code. The Code of Criminal Procedure certainly does not contemplate a prohibitory order as the only mode of attachment. Under section 88 of the Code, *e.g.* it is laid down that attachment may be made by taking possession or by appointment of a Receiver, or by a prohibitory order restraining payment of rent, delivery of possession, etc. These are recognised modes of attachment and in the absence of any restriction in the section itself there seems to be no good reason why one or the other method should not be adopted, as may be considered appropriate for the object in view. It was remarked by Sankaran Nair J. in *Srinivasa Pillay v. Sathayappa Pilley* (3), that the right to attach property carries with it the right to take necessary steps for its custody and management and that a Receiver can be appointed for the purpose under section 145, Criminal Procedure Code, just as he can be appointed under section 146, Criminal Procedure Code, though in the former case he acts mere-

(1) (1918) 44 I. C. 41.

(2) (1920) 21 Or. L. J. 73, 76.

(3) (1912) 13 Cr. L. J. 295.

ly as an agent of the Court and has not all the powers which are specifically conferred by section 146, Criminal Procedure Code, upon a Receiver appointed under that section. I, accordingly, hold that there was nothing illegal in the mode of attachment.

Lastly, it was urged that attachment of moveable property on the premises of the factory, *i.e.* the machinery, coal, goods, etc., was at any rate beyond the scope of section 145, Criminal Procedure Code, and, therefore, *ultra vires*. In support of this contention reliance was placed on *Dhani Ram v. Bholu Nath* (1), in which it was held that attachment of shop-goods was illegal. But the point was conceded by the counsel in that case and there is no discussion of the subject in that ruling.

It may be conceded at once that proceedings under section 145, Criminal Procedure Code, can only be taken in respect of a dispute concerning 'land and water' and the section only gives power to attach the subject of such dispute in case of emergency. The expression 'land and water' has been explained in the section as including buildings, markets, fisheries, crops and other produce of land and the rents and profits of any such property. Moveable property as such would not, therefore, ordinarily come within the purview of the section, unless it is in the shape of crops or other produce of land or rents and profits of the property in dispute. But a difficulty arises in cases, where there is moveable property in the building, etc. to be attached. Very often the dispute relates not to the mere building or structure itself, but also to the valuable property inside. In the present instance,

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e.g., it is obvious that the dispute relates not merely to the building of the factory, but also to the valuable machinery, goods, etc. on the premises. What is then to be done when a Magistrate has to attach such property in the case of emergency? There seems to be paucity of authority on the point. The only authority to which reference was made in the course of arguments was *K. Kochunny v. P. C. Manavikrama Rajah Amyal* (1), in which an elephant was attached along with some forest land in the course of proceedings under section 145, Criminal Procedure Code. It was held that attachment of the elephant was not legal, but at the same time the elephant being on the premises to be attached, the officer attaching the forest was entitled to take it temporarily into his custody. The learned Judge, who decided the case (Sankaran Nair J.) remarked as follows:—

“ But the immoveable property or the forest is under attachment and it is conceded that the elephant was not removed from the forest at the time of attachment. Neither of the parties is entitled to enter the forest after the attachment. The officer attaching the forest is, therefore, entitled to take possession of the elephant. It is clear that the owner or the person in possession of the forest in which the pit was dug is also entitled to the ownership or possession of the elephant and *prima facie* the person, if any, in whose favour, the order under section 145, of the Criminal Procedure Code, will be passed, will also be entitled to the possession of the elephant unless there are special circumstances in the case to show that he is not entitled to its possession. Assuming, then, without deciding, that the petitioner removed

(1) (1912) 13 Cr. I. J. 222.

the elephant out of the pit and kept it within the boundaries of the forest attached, I am not now prepared to direct the elephant to be delivered to him. The order for delivery of possession to the party entitled can, in the circumstances, be made only after the final order under section 145 of the Criminal Procedure Code concerning the immoveable property."

This seems to me to be the only reasonable view to take in the circumstances. It would be, I think, absurd to hold that when a Magistrate takes possession of immoveable property in case of emergency he should first remove the moveable property therefrom or hand it over to one or the other of the parties before the question of possession of the immoveable property is decided in the proceedings. *Prima facie*, the moveable property in such cases belongs to the person entitled to the possession of the immoveable property in dispute. The order passed by the Magistrate is only a provisional administrative order and does not in any way decide the rights of the parties. I am, therefore, of opinion that the police officers who have been appointed to take charge of the factory are entitled to retain for the present the custody of the moveable property which was on the premises at the time of attachment, subject to the final order of the Magistrate, when the question of the possession of the factory itself is decided in the proceedings under section 145, Criminal Procedure Code. There is, of course no justification for detaining any property about which there is no dispute, but I understand that all such property has been already excluded.

I dismiss the petition.

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Petition dismissed.