

\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C.2454/2013 & CRL.M.A.9432/2013**

Date of Decision: 03.07.2015

NARAYAN KUMAR Petitioner

Through Mr. Udai Raj Singh, Adv.

versus

STATE & ANRS. Respondent

Through Mr. Pramod Saxena, APP.
SI Ravi Shankar, PS Saket.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **03.07.2015**

1. The petitioner has sought quashing of the notice dated 02.03.2012 under Section 145 of the Code of Criminal Procedure (hereinafter referred to as 'Code') issued by the SDM on the basis of a report by Police Station Ambedkar Nagar, regarding apprehension of breach of peace as a result of dispute over possession of House No.6/108, DDA Flats, Madangir, New Delhi.

2. The notice, under challenge, reads as under:

“ Notice

A Kalandra under section 145 of Cr.P.C received from Police Station Ambedkar Nagar regarding possession of H.No.6/108 DDA Flat Madangir.

You are hereby show cause to appear before this Court either in person or through pleader on 19.03.2012 for

maintainability of this case.”

3. From the perusal of the notice, it appears that the petitioner and Respondent no.2 were called by the Magistrate for showing the maintainability of this case. The notice does not state about any apprehension of breach of peace as a result of the dispute over possession, or the satisfaction of the Magistrate about the existence of any emergency.

4. The police report which is annexed as P1 to the petition refers to dispute over a dilapidated residential house, not worthy of living. It further refers to the respective claim of the parties and the fact that the petitioner has already filed a case before the Civil Court for specific performance.

5. Section 145 of the Code falls under Chapter X which deals with the preventive jurisdiction of the Magistrate.

6. Section 145 (1) of the Code reads here as under:

“145(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, 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, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

7. To initiate a proceeding under Section 145 of the Code, what is required is that there should be a likelihood of breach of peace because of the dispute and that the Magistrate ought to be satisfied from the materials on record, which could be the police report or any other information, that such emergency exists.

8. It is essential for the assumption of jurisdiction by the Magistrate that he should be satisfied about the likelihood of breach of peace. The requirement of law is very clear that the Magistrate shall record an order in writing, stating the grounds of his satisfaction before requiring the parties concerned in such dispute to attend his court in person or by their pleader.

9. Though every fact need not be stated by the Magistrate under Section 145(1) of the Code but such satisfaction ought to be of a speaking nature. The preliminary order, therefore, is required to be passed as to the grounds for assuming the jurisdiction. Dispute *per se* may not be a ground for apprehension of breach of peace.

10. The term 'satisfaction' is of considerable importance and is extremely expansive. It connotes absence of any doubt or uncertainty.

11. The notice merely states that the parties ought to appear before the learned Magistrate for showing the maintainability of the case. This, the court is afraid, is not the requirement under Section 145(1) of the Code.

12. Unless the Magistrate is satisfied about the existence of

apprehension of breach of peace because of the dispute, there could not be any assumption of jurisdiction under Chapter X of the Code.

13. Learned counsel appearing for the petitioner submits that the police was informed about the existence of a proceeding before the Civil Court, even though for Specific Performance, nonetheless the conclusion of such proceeding would conclude the dispute about the title and possession of the property. Such statement was also made part of the police report.

14. If the Magistrate was doubtful about initiating proceeding or the maintainability of the proceeding, the parties ought not to have been noticed to stake their claim over the property.

15. The requisite satisfaction of the Magistrate, being non-existent which is evident from the notice as the parties have been summoned to establish the maintainability of the proceeding, vitiates the entire proceeding.

16. The records reveal that cases have been filed by the parties against each other. The suit for specific performance being suit No.549/2010 is still pending before the competent Court of Delhi. In the aforesaid proceeding, a local commissioner had also been appointed to ascertain the physical possession.

17. Learned counsel for the respondents, however, with respect to the pendency of a civil case, submitted that in the suit for specific performance, namely 549/2010, he is not a party, and has prayed to be

impleaded thereon.

18. Mr. Mehra, learned Standing counsel submitted that the dispute over the property is such that it is led to lodging of three First Information Reports. Apprehension of breach of peace does exist and determination of possession and not the title was, therefore, required to prevent any such breach of peace. It was for this reason that the police, in their report, prayed for issuance of an order for sealing of the property.

19. There is no cavil on the proposition of law that while assuming jurisdiction under Chapter X of the Code, the Magistrate is duty bound to record his satisfaction about the existence of breach of peace. The satisfaction note could be brief or descriptive, but it should speak out the mind of the learned Magistrate. The wordings of the notice under challenge is reflective of non-satisfaction as parties have been summoned for discussion over maintainability of the proceedings.

20. Considering this aspect of the matter, the proceedings before the SDM was stayed vide order dated 17.06.2013 by this Court. It is also relevant to indicate that the notice for initiation of the proceeding under Section 145 was stayed way back in the year 2013 and since then, there has not been any untoward incident leading to breach of peace. Whatever skirmishes between the parties took place, FIR was promptly registered by the police.

21. Be it noted, that for passing a final order under Section 145 of the Code with respect to the possession of the property, there may not

be any requirement of the existence of emergency. Nonetheless, since the initiation of the proceeding is found to be defective, it cannot be sustained in the eyes of law.

22. For the reasons aforesaid, this application must succeed.

23. Notice dated 02.03.2012 is quashed.

24. Needless to say that if any emergency erupts, proceedings could be initiated afresh but only in accordance with law.

25. This petition as well as application stand disposed of accordingly.

(ASHUTOSH KUMAR)
Judge

JULY 03, 2015/ab