

(1983) 04 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3300-M of 1982

Asa Singh and ors.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-04-1983

Acts Referred:

Citation : (1983) AICLR 200 : (1983) 1 RCR(Criminal) 492

Hon'ble Judges : M.M.Punchhi, J

Advocate : A.K. Mittal, K.K. Cuccria, Ashok Bhan, B.S. Khoji, Advocates for appearing Parties

Judgement

M.M. Punchhi, J.

1. This is a petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) in order to challenging an order passed by the Sub Division Magistrate, Patiala, whereby, on initiation of proceedings under section 145 of the Code, he passed an order under section 146(1) of the Code, and appointed a receiver ordering to take possession of the land in dispute. The petitioner challenged that order before the Additional Sessions Judge, Patiala, in revision, who dismissed the same taking the view that the order was interlocutory and hence not revisable. Even otherwise, he took the view that the order was not worth being interfered with in revision.

2. Parties counsel are agreed that the receiver has not taken possession of the land in dispute. Parties counsel are also agreed that there exists an order of the Civil Court for maintaining the status quo between the parties and the same was passed in their presence. Learned counsel for the petitioners asserts that it is the petitioners who are in possession of the land in dispute. In the same manner, the learned counsel for the contesting respondents (legal, heirs and representatives of Maghi Ram deceased) asserts that it is the respondents who are in possession of the land.

3. Two dates are relevant. The order status quo regarding possession was passed

by the Civil Court on 21/11/1982 in the presence of the parties and the order appointing receiver was passed by the Sub Divisional Magistrate on 24/3/1982. In other words the said order tantamounts to disturbing the order of status quo and tends to drive the parties, whosoever is in possession, of the property in dispute. In this view of the matter, passing of an order under section 146 of the Code would tantamount to an abuse of the process of the Court. Preventive measures to prevent breach of peace and preserve public tranquility, would well have been taken by binding down the parties under section 107 of the Code. Such steps the learned Sub Divisional Magistrate can even now take suo motu if the circumstances so warrant. So, the impugned order cannot be allowed to sustain.

4. For the foregoing reasons, this petition is allowed and the impugned order is quashed, leaving it open to the Sub Divisional Magistrate to proceed further in accordance with law.