

(2012) 03 UK CK 0109

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 1029 of 2010

Ashok Kumar

APPELLANT

Vs

State of Uttarakhand, Smt. Mona Sharma and Narendra Kumar

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 146(1), 146(1), 482

Citation : (2012) 03 UK CK 0109

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Tapan Singh, for the Appellant; M.A. Khan, Brief Holder for the State and Mr. Manish Arora, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard. By means this petition moved u/s 482 of Cr.P.C., the petitioner has sought quashing of the order dated 25.11.2009, passed by Sub Divisional Magistrate, Haridwar, in Case No. 06 of 2009, State Vs. Mona Sharma, Police Station-Pathri, whereby said court has directed attachment of the property by issuing order u/s 146(1) of Cr.P.C. The petitioner has further challenged the order dated 23.10.2010, passed by Additional Sessions Judge/1st Fast Track Court, Haridwar, in Criminal Revision No. 09 of 2010, affirming the order passed by the Magistrate.

2. Brief facts of the case are that Plot No. 181 situated in Village-Subhashgarh, was initially entered in the name of the husband of Mona Sharma (respondent No. 2), but later entry in favour of the petitioner Ashok Kumar was made, due to which, a dispute arose, as to the possession of the said plot. The Police submitted report dated 01.10.2009, before the Sub Divisional Magistrate, Haridwar, apprehending breach of peace, and requesting for proceedings u/s 145 of Cr.P.C. It appears that the Sub Divisional Magistrate, Haridwar, on said report issued notices to the rival parties and got satisfied as to the apprehension of

breach of peace. Accordingly, vide his impugned order dated 25.11.2009, he passed an interim order u/s 146 (1) of Cr.P.C., directing attachment of the property i.e. land of Khasra No. 181 measuring about 0.400 hectares in Village Subhashgarh. Aggrieved by said order, the present petitioner filed Criminal Revision No. 09 of 2010, before the revisional court, which was decided after hearing the parties by Additional Sessions Judge/1st Fast Track Court, Haridwar, vide his order dated 23.10.2010, affirming the order of the Magistrate.

3. Learned counsel for the petitioner submitted that it is settled principle of law that where the competent civil court is seized of the matter, the Magistrate should not proceed u/s 145 of Cr.P.C. Reliance is placed on behalf of the petitioner in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, , Amresh Tiwari Vs. Lalta Prasad Dubey and Another, and Kunjbihari Vs. Balram and another (2006) 11 SCC, 66.

4. I have gone through the aforesaid case laws and found that the same are of no help to the petitioner in the present case. From the impugned order dated 25.09.2009, passed by Sub Divisional Magistrate, Haridwar, it nowhere reflects that it has agitated before the said authority that any civil suit was pending. The Magistrate has to get satisfied on the basis of the record before it. Of course, it appears that at the revisional stage, the present petitioner raised the issue that the civil suit was pending and the power u/s 145 of Cr.P.C., should not have been exercised.

5. It is pertinent to mention here that from the plain reading of Sub-Section (1) of Section 146 of Cr.P.C., it is clear that in the case of emergency, the Magistrate is not required to wait for the orders of the civil court, and can pass orders of attachment, which shall be subject to the decision of the competent court. It is further pertinent to mention here that in respect of the agricultural land, the competent court, as to which one of the entries in the revenue record is correct, is the revenue authority, not the civil court. The suit is said to have been filed in the civil court (by the respondent No. 2). It cannot be said that on the date on which impugned order was passed by the Magistrate, the lis was pending before the competent court. From the perusal of the revisional court's order, it is further found that the revisional court, after summoning the record of the lower court, has observed that the subsequent entry in the revenue record in favour of the present petitioner Ashok Kumar was made by the Lekhpal, without obtaining any orders from the higher authorities. The question before Sub Divisional Magistrate relates only to possession of the property and apprehension of breach of peace.

6. In the above circumstances, this Court is of the view that by interference with the impugned orders passed by the authorities below, the court would not be securing the ends of justice, which is the object of Section 482 of Cr.P.C. Therefore, without expressing any opinion, as to the entitlement of possession over disputed land, the petition u/s 482 of Cr.P.C. is dismissed. Interim order automatically stands vacated. (Urgency Application No. 1029 of 2010, stands disposed of).