
(1994) 05 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 536 of 1993

Balbir Sen Khanna

APPELLANT

Vs

Mrs. Nirmal Chawla

RESPONDENT

Date of Decision : 05-05-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 401

Citation : (1994) 107 PLR 604 : (1994) 3 RCR(Criminal) 204 : (1994) 2 RCR(Criminal) 667

Hon'ble Judges : S.K. Jain, J

Bench : Single Bench

Advocate : M.L. Sarin and B.R. Mahajan, for the Appellant; R.L. Sharma, for the Respondent

Judgement

S.K. Jain, J.—Shri Ram Ashram Senior Secondary School, Amritsar, is an institution owned and run by Shri Ram Educational Society (Registered), Amritsar. The society consists of life members and life associates and its member can be removed by 3/4th members of the society on the recommendation of the governing council.

2. Mrs. Nirmal Chawla, respondent herein, working as Principal of the school started challenging the authority of the Governing Council to run the affairs of the School smoothly. She was instrumental in filing a suit by staff members of the School namely Mrs. Shanta Devgan, Miss. Vijay Sharma and one Suman Kumar, u/s 92 C.P.C. for removal of the members of the Governing Council. The suit was filed on 13.3.1989 and was withdrawn on 31.8.1989. Thereafter, Mrs. Nirmal Chawla, Mrs. Shanta Devgan, Miss Vijay Sharma and Suman Arora filed another suit on 18.8.1989 for removal of the members of the society. The said suit is pending in the Court of Shri C.D. Gupta, Sub Judge Ist Class, Amritsar.

3. In July, 1989, Mrs. Nirmal Chawla formed a Parent Teacher Association, with herself as Secretary and Mrs. Shanta Devgan as Vice President. The said association started interfering in the functioning of the Governing Council of the

Society. On 29.11.1989, the Governing Council of the Society terminated the services of Mrs. Nirmal Chawla, as she had not been allowing the Council to run the affairs of the School smoothly and has started indulging in acts of disobedience of the lawful authority of the Governing Council. Mrs. Chawla challenged the said order of the Governing Council by filing a suit alongwith an application for grant of Ad-interim injunction. That application was dismissed. Thereupon, Mrs. Nirmal Chawla got the suit dismissed as withdrawn on 16.12.1989 by Shri M.L. Sarpal, Sub Judge 1st Class, Amritsar.

4. Thereafter, Mrs. Nirmal Chawla, with the help of the members of the alleged Parent Teacher Association declared removal of the President and Secretary of the society illegally. Mrs. Nirmal Chawla also set up her own Governing Council and ordered the cancellation of the order of her termination. The said association under the leadership of Mrs. Nirmal Chawla started making illegal attempts to interfere in the lawful possession of the School and its management by Governing Council of the Society. The Society through its Secretary, moved an application to the Deputy Commissioner for taking appropriate action to maintain peace at the School premises.

5. On an application by the Society to the Urban Ceiling Officer-cum-Executive Magistrate proceeding u/s 145/146 Cr. P.C. were started. Shri L.D. Hans, Sub Divisional Magistrate, Amritsar was appointed as Receiver of the property of the School vide order dated 20.12.1989. The said Official Receiver took charge of the School and the Society through the petitioner who handed over the charge of the School, its Bank account and other record of the School to the Receiver.

6. The validity of the order dated 20.12.1989 passed by the Executive Magistrate thereby initiating proceedings u/s 145 Cr. P.C. and appointment of Receiver u/s 146 Cr. P.C. was challenged by Mrs. Nirmal Chawla vide Criminal Miscellaneous Petition No. 77-M of 1990 before this Court. The said Criminal Miscellaneous application was dismissed by a Single Bench of this Court on 10.1.1990.

7. On the allegation that while ordering attachment of the property of the School u/s 145/146 Cr. P.C. their adjoining property had also been included inadvertently, the Jain Paramrath Funds Society filed Criminal Miscellaneous Petition No. 1321-M of 1990. The said petition was admitted and is still pending in this Court.

8. Thereafter, Mrs. Nirmal Chawla, got another petition filed through Sh. Dev Parkash Sharma power of attorney holder on behalf of Mr. Ravinder Nath Kumaria alleged secretary of the so called Governing Council appointed by the Parent Teachers Association. The said Criminal Miscellaneous Petition is No. 3769-A-M of 1990. In this petition stay of operation of the attachment of the School property was granted on the misrepresentation of fact that operation of the order has already been stayed by this Court in Criminal Miscellaneous Petition No. 1321-M of 1990. Although, the property in dispute in both these petitions is totally different.

9. Balbir Sen Khanna, Hony, Secretary, Shri Ram Educational Society, Shri Ram Ashram Senior Secondary School, Amritsar, petitioner herein, filed Criminal Miscellaneous petition No. 4328-M of 1993 for initiation of proceedings u/s 340 Cr. P.C. against Mr. Dev Parkash Sharma, Mr. Ravinder Nath Kumaria and Mrs. Nirmal Chawla, for false personation in judicial proceedings, dishonestly making false claim in Court, misrepresentation and fraud. This was also admitted vide order of this Court dated 17.5.1993.

10. Proceedings Under Sections 145/146 Cr.P.C. were pending in the Court of Urban Ceiling Officer-cum-Executive Magistrate, Amritsar. This case was transferred to the Court of another Executive Magistrate, Shri S.S. Khara, without any intimation to the parties. On receipt of the file order dated 8.4.1993 (Annexure P-2), thereby dropping the proceedings on the basis of alleged discreet enquiries, was passed.

11. It is that order of the Executive Magistrate which has been challenged in this Criminal Miscellaneous Petition u/s 401 of the Code of Criminal Procedure and which requires my examination of its sustainability.

12. After obtaining order dated 8.11.1993 from Hon''ble the Chief Justice, The Registry has posted following cases before me to be heard together:-

(1) Criminal Misc. No. 1321-M of 1990;

(2) Criminal Misc. No. 4828-M of 1993: and

(3) Criminal Misc. No. 536-of 1993.

(1) Criminal Misc. No. 1321-M of 1990.

Vide order of this Court dated 14.1.1994 Criminal Miscellaneous Petition No. 1321-M of 1990 was dismissed as having become infructuous.

(2) Criminal Misc. No. 4828-Mof 1993.

Arguments have been concluded, but on the request of learned counsel for the parties, this Criminal Misc. Revision Petition has been adjourned to 11.5.1994 and will be disposed of vide separate judgment.

(3) Criminal Misc. No. 536 of 1993.

The impugned short order dated April 8, 1993 is reproduced below for ready reference:-

" File has been presented after its transfer from the Court of Sh. T.N. Passey, PCS, Urban Ceiling Officer-cum-Executive Magistrate. I have gone through the file. In this case, order u/s 145/146 Cr. P.C. was passed on 20.12.1989, vide which property belonging to Shri Ram Educational Society, Sri Ram Ashram Senior Secondary School, The Mall, Amritsar was attached and S.D.M., Amritsar was appointed as Receiver. This order was challenged in Hon''ble Punjab and Haryana High Court, Chandigarh by way of Criminal Misc. Nos. 1321-M of

1990/3769-M, 3770-of 1990 (O&M). In these petitions, Hon"ble Mr. Justice S.S. Grewal passed the following order :-

"Notice to the respondents including A.G. Punjab for 6.4.1990. Meanwhile, operation of the order concerning attachment of the property of the petitioner-is directed to be stayed".

February 15, 1990.

"Notice to the respondents for 7.6.1990 when this petition shall come up with Criminal Misc. No. 1321-M of 1990. Stay in the same terms".

13. These Criminal Misc. are still pending in the Punjab & Haryana High Court. I have made discreet enquiries about the affairs of Sri Ram Ashram Senior Secondary School, Amritsar. The School is functioning normally and I am satisfied that there is no longer any likelihood of breach of peace with regard to the subject of dispute. Hence, there is no need to carry on the proceedings Under Sections 145/146 Cr. P.C. So. Proceedings in this case are dropped. File be consigned to the Record Room."

14. It is not disputed that proceedings Under Sections 145/146 Cr. P.C. were initiated at the instance of the petitioner herein; Criminal Misc. Petition No. 77-M of 1990 filed by Mrs. Nirmal Chawla, for challenging the validity of the order passed by the Executive Magistrate initiating proceedings u/s 145 Cr. P.C. and appointment of Receiver u/s 146 Cr. P.C. was dismissed by this Court on 10.1.1990; that the file was transferred to the Court of Shri S.S. Khara, Executive Magistrate who dropped the proceedings without summoning the parties.

Learned counsel for the appellant has vehemently argued that after having attached the property and appointing a receiver thereof, the Magistrate could not drop the proceedings. In reply, learned counsel for the respondents has argued supporting the impugned order.

As mentioned in the earlier part of this judgment on an application- of the Society, the Urban Ceiling Office-cum-Executive Magistrate, Amritsar, had proceeded Under Sections 145/146 Cr.P.C. appointed Sh. L.D. Hans, Sub Divisional Magistrate, Amritsar, as Official Receiver vide order dated 20.12.1989. The said Official Receiver took charge of the School Property. Bank Account and other record of the School were also delivered to the Receiver by the society through the petitioner.

Now under these circumstances, can the Magistrate stop or close the proceedings after having acted in the manner hereinbefore mentioned- To my mind, he cannot.

15. Sections 145 and 146 Cr. P.C. together constitute a scheme for the resolution of a situation where there is a likelihood of breach of peace because of a dispute concerning any land or water or their boundaries. If Section 146 is torn out of its

setting and read independently of Section 145, it is capable of being construed to mean that once an attachment is effected in any of the three situation namely:-

(i) If the Magistrate at any time after making the order u/s 145(1) considered the case to be one of the emergency, or;

(ii) if he decided that none of the parties was then in such possession as was referred to in Section 145; or

(iii) if he was unable to satisfy himself as to which of them was then in such possession of the subject of dispute;

The dispute can only be resolved by a competent Court and not by the Magistrate effecting the attachment. But Section 146 cannot be so separated from Section 145. It can only be read in the context of Section 145. Contextual construction must surely prevail over isolationist construction. Otherwise, it may mislead.

16. The bare reading of the impugned order would show that the Executive Magistrate had dropped the proceedings without assigning any reasons and solely on the ground that on the basis of discreet enquiries made by him, he was satisfied that there is no longer any likelihood of breach of peace.

17. It is now well settled that the order of attachment and withdrawal of the same by no stretch of imagination can be treated as administrative order. It has been repeatedly held by this Court that where an authority makes an order in exercise of a judicial or quasi-judicial function, it must record its reasons in support of the order it makes. Every such order must be supported by reasons. That has been laid down by a long line of decisions. Fair play in criminal justice system is a final juristic facet, at once fundamental and inviolable and natural justice is an inalienable functional component of judicial/quasi-judicial acts. The learned Magistrate has not given any reasons for its satisfaction. What the discreet enquiry was is any body's guess. It is not the case of either of the parties that the dispute between them with regard to the School property had seized to exist by compromise or otherwise. The Executive Magistrate himself in the impugned order has noticed that Criminal Miscellaneous Petition Nos. 1321-M of 1990, 3769-M of 1990 and 3770-M of 1990 (O&M) were still pending in the High Court. It is, therefore, not understood as to how he satisfied his mind that there was no longer any likelihood of breach of peace with regard to the subject of the dispute. Here, it is indubitable that the dropping of the proceedings u/s 145/146 Cr.P.C. - is a judicial direction. The Supreme Court as well as this Court has impressed the requirements of natural justice on such jurisdiction and one such desideratum is spelling out reasons for the order made, in other words, a speaking order. The inscrutable face of a sphinx is ordinarily incongruous with a judicial or quasi-judicial performance. It is in my view, an imperative of the above provisions that the Magistrate shall give reasons for his order dropping the proceedings. Such a guarantee ensures rational action by the Magistrate, because reasons imply relevant reasons, not capricious ink and the need for

cogency rivets the Magistrate's mind to the pertinent material on record. Moreover, once reasons are set down, the order readily exposes itself to the revisional jurisdiction of this Court u/s 401 of the Code of Criminal Procedure so that perversity, illiteracy, extraneous influence, malafides and other blatant infirmities straight get caught and corrected. Thus, viewing the situation from the conspectus of requirements and remedies, statutory agencies may be inhibited and the scare of arbitrary behaviour allayed once reasons are required to be given.

18. As a sequel to the above discussion, I accept this Criminal Revision Petition and set aside the impugned order. Parties through their counsel are directed to appear before Mr. S.S. Khara or his successor in office, as the case may be, on 30.5.1994. The Official Receiver will take possession of the properties in dispute immediately. The Executive Magistrate is directed to proceed strictly in accordance with law and decide the matter expeditiously, preferably within six months.