

(1997) 05 P&H CK 0168

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11137-M of 1996

Balbir Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 23-05-1997

Acts Referred:

Citation : (1997) 4 AICLR 369 : (1997) 4 RCR(Criminal) 202

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

Advocate : Divya Khungar, P.S. Sullar, Surinder Lamba, K.S. Dhaliwal, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. Balbir Singh son of Jasmer Singh, Petitioner herein, has approached this court under Section 482 Cr.P.C. for quashing the Calendra under Section 145 Cr.P.C. dated 6.12.1995 (Annexure P.2), the order dated 29.5.1996 passed by the secondrespondentSub Divisional Magistrate, Guhla (Annexure P.3) and also the order passed by him on the same date under Section 146 Cr.P.C. (Annexure P.4).

2. Sub InspectorStation House Officer, Police Station Guhla presented a Calendra under Section 145 Cr.P.C. on 6.12.1995 before the Sub Divisional Magistrate, Guhla, arraying the respondents 3 to 9 herein namely Amar Singh son of Jangir Singh and others as the first party and Karnail Singh, Kehar Singh and Richpal Singh (respondents 10 to 12) herein as the secondparty. He had alleged therein that the forefather of Jangir Singh (firstparty), Lakhmir Singh, Balbir Singh, Karnail Singh sons of Jasmer Singh are mortgagees of the Government land mearusing 46 kanals 9 marlas as described "in the Calendra, out of which certain portions as mentioned therein were distributed to the persons named therein. He has also mentioned that in respect of these lands while cultivator has been shown to be some person, the girdawari stands in the name of some other person. He further mentioned that on 27.11.1995 Lakhmir Singh and others with the intention to take possession of 12 Kanals and 10 Marlas of land were irrigating the fields while Amar Singh and others objected to the same since it

was in their possession from the beginning on the basis of a family settlement. According to the Calendra a quarrel started and Lakhmir Singh got his statement recorded stating that there is a dispute between them and Amar Singh over the land measuring 12 kanals and 10 marlas regarding which cases are pending in Court, that on that day he, along with Jasmer Singh, Bharpur Singh and Charan Singh, was irrigating their fields, that in the meanwhile Amar Singh, Jorawar Singh, Naseeb Singh and others came and attacked in which Jasmer Singh died. It has further been stated in the Calendra that on this statement, Case No. 120 dated 27.11.1995 under Sections 302, 324, 148 and 149 IPC was registered at Police Station Guhla and the accused have been arrested. It has also been stated in the Calendra that both the parties are interested in this land measuring 12 kanals and 10 marlas, which is adjoining the abadi deh and both of them want to be in possession of the land. It has further been stated that the dispute is over the whole of the land measuring 46 kanals and 9 marlas, and therefore, a Receiver be appointed since an unfortunate incident had occurred, and in future also there is every apprehension of unfortunate incidents. So saying the Sub Inspector/SHO requested that proceedings under section 145 Cr.P.C. may be initiated and during the pendency of these proceedings an order under Section 146 Cr.P.C. be made. On the basis of this Calendra (Annexure P.2) the SDM Guhla initiated proceedings under Section 145 Cr.P.C. and also passed an order attaching the lands and appointing a Receiver. This order is dated 29.5.1996 and it mentions that both the parties were summoned, that the Legal Representatives of Jasmer Singh were also summoned, that Balbir Singh appeared in the Court and the rest of the legal representatives did not appear, that parties 1 and 2 filed their written replies while no reply was filed by legal representatives of Jasmer Singh, and that counsel for the parties were heard.

3. After hearing the counsel, the SDM observed that there is great tension between the parties for the possession and cultivation of the dispute land because a quarrel took place on 27.11.1995 regarding possession of the land in which Jasmer Singh had died, that the FIR is on the file, that the counsel also admitted this fact, that the parties have been chargesheeted under Sections 107/151 Cr.P.C. because of this land, that the land in dispute is lying vacant and tension between the parties is prevailing since both the parties intend to cultivate the land. The Sub Divisional Magistrate has also observed that quarrel may take place and serious injuries may be caused and someone may die also, and in this situation, there is immediate apprehension of breach of peace, that this is a case of emergent nature and, therefore, he was ordering attachment of the disputed land (described in his order) and was appointing Tehsildar Guhla, as its Superdar. On the basis of this order, the SDM passed an order (Annexure P.4) authorising the Tehsildar Guhla, who has been appointed as Superdar to take possession of the land till a decree or order of a competent Court determining the rights of the parties or the claims to possession are decided.

4. That is why the petitioner Balbir Singh one of the sons of Jasmer Singh has approached this Court for quashing the Calendra and the orders passed by the

Sub Divisional Magistrate. He impleaded the first and second parties to the Calendra (as respondents 3 to 12) as also Lakhmir Singh, Bharpur Singh, Darshan Singh and the other sons of Jasmer Singh (as respondents 13 to 15).

5. On notice to the respondents, reply has been filed on behalf of the state through the Sub Inspector Station House Officer of Police Station Guhla. Though, the respondents 3 to 9 are represented by counsel they have not filed any reply. The 10th respondent also did not file any reply. Notices to the other respondents were stated to be unnecessary as they were formal parties.

6. According to the petitioner his father Jasmer Singh (since deceased) was in possession as mortgagee of agricultural land measuring 12 kanals and 10 marlas comprised in rectangle No. 71 Kila No. 21 Rectangle 85 Killa No. 1 min 101 out of the land measuring 46 kanals 9 marlas, that the respondents Nos. 3 to 9 were unnecessarily harassing his father with a view to dispossess him, that his father filed a civil suit 627 of 1995 on 15.6.1995 on the file of the Additional Senior Sub Judge, Guhla and an application under JUDGMENT 39 rules 1 and 2 of the Code of Civil Procedure, that the Civil Judge granted an ex parte interim injunction in favour of his father and against the defendants on 15.6.1995, and that after the contest by the defendants, the Court confirmed the order on 5.10.1995 by passing a detailed order (Annexure P.1). The petitioner further claims that the respondents 3 to 9 in the Calendra connived with the local police, and with a view to nullify the order passed by the Civil Court on 5.10.1995 this Calendra Annexure P.2 was filed for attaching the entire land measuring 46 kanals 9 marlas including the land comprised in civil suit No. 627 of 1995. The petitioner also claims that while the name of the father of the petitioner (namely, Jasmer Singh) was written in the Calendra initially, it was struck off before filing it in the Court, and that it was presented without making the legal representatives of Jasmer Singh as parties. According to the petitioner Jasmer Singh having been murdered on 27.11.1995 his legal representatives were necessary parties to the proceedings regarding the land owned and possessed by Jasmer Singh. According to the petitioner himself and the other legal representatives of Jasmer Singh were never served in the case though they were ordered to be made parties by the second respondent on 2.4.1996 on the application of respondents 3 to 9. Petitioner's case is that the second respondent, without giving any opportunity to the affected persons ordered attachment and also appointed the Tehsildar Guhla as Superdar. The petitioner claims that the second respondent Sub Divisional Magistrate, did not apply his mind to the facts and circumstances of the case and failed to look into the fact that the legal representatives of Jasmer Singh were in exclusive possession of 12 kanals 10 marlas of land out of the total land 46 kanals 9 marlas, about which there was no dispute. The petitioner who also alleges that a detailed order has been passed by the learned Sub Judge, prima facie finding Jasmer Singh as having been in possession of 12 kanals and 10 marlas of land and restraining the defendants from interfering with his possession, and therefore, the SDM was not competent to pass these orders (Annexures P.3 and P.4). According to the petitioner the order of the Civil Court

has to take precedence over the order passed by SDM and if there is any violation of the order passed by the Civil Court, the same can be punished by it according to law, and that after passing of the interlocutory orders by the Civil Court it could legitimately be said that there is no likelihood of breach of peace with regard to the land in dispute. The petitioner further claims that Jasmer Singh was murdered on 27.11.1995 and that the Calendra was presented on 6.12.1995, that it remained pending till 29.5.1996 and all of a sudden this order has been passed.

7. In the reply filed by the Sub Inspector/SHO Police Station Guhla, it has not been disputed that the Civil Court has passed the injunction order Annexure P.1, but, it has been stated that on 27.11.1995 a quarrel took place between the parties for possession and cultivation of the land in dispute in which Jasmer Singh father of the petitioner died, and on the statement of Lakhmir Singh, the brother of the petitioner herein FIR has been registered on the same day under Section 302 IPC and other sections of the Indian Penal Code by Police Station Guhla, in which the accused including respondents 3 to 5 have been arrested. It has further been stated that a challan under Sections 107 and 151 Cr.P.C. in respect of both the parties has also been presented. It has further been stated that thereafter there was tension between the parties regarding the lands measuring 12 kanals and 10 marlas situated near the abadi area and, therefore, the Calendra under Section 145 Cr.P.C. was submitted on 5.12.1995 to the SDM so that no unfortunate incident could occur in future. According to the reply, initially the name of Jasmer Singh was mentioned in the Calendra but since he had died, his name was struck off and his legal representatives were brought on record. It has further been stated in the reply that the petitioner appeared in the Court along with the other legal representatives, and that the order has been passed after due consideration as there was an emergency.

8. I have heard the counsel for both the sides.

9. According to the petitioner his father Jasmer Singh was in possession and enjoyment of 12 kanals 10 marlas of land out of the total land 46 kanals and 9 marlas and when the respondents 3 to 9 wanted to interfere with his possession Jasmer Singh filed Civil Suit No. 627 of 1995 on 15.6.1995 before the Addl. Senior Sub Judge, Guhla and also an application under Section 39 rules 1 and 2 CPC for granting interim injunction order restraining the defendants therein from interfering with his possession and enjoyment of the property. The petitioner contends that an order of exparte ad interim injunction was granted in favour of his father in respect of these lands, and the defendants in that suit contested the application, but the learned Additional Senior Sub Judge, passed an order dated 5.10.1995 confirming the exparte order of injunction granted already on 15.6.1995. Copy of this order has been produced as Annexure P.1. A perusal of this order shows that Shamsheer Singh had filed this suit against Amar Singh and Jora Singh sons of Jagir Singh (the respondents 3 and 4 herein) and two other persons. A perusal of the order also shows that the entries in the revenue

records right for 197273 onwards stand in the name of plaintiff in that suit namely, Jasmer Singh wherein he had been recorded as being in exclusive cultivating possession of agriculture land measuring 12 kanals 10 marlas. The learned Additional Senior Sub Judges found that plaintiff therein had made out a prima facie case, that the balance of convenience was also in his favour and, therefore, passed the order restraining the defendants from interfering with the cultivating possession of the plaintiff in that suit. As pointed out already this order was passed on 5.10.1995.

10. As per the Calendra, it is only thereafter that is, on 27.11.1995 there was a quarrel between the parties in which Jasmer Singh (father of the petitioner herein), in whose favour the orderAnnexure P.1 was passed by the Civil Court, was killed and a case has been registered against the accused including the respondents 3 to 5 herein under Section 302 and other sections of the Indian Penal Code. It is on this basis that a quarrel had already taken place, that a death had occurred, and that further unfortunate incidents may not occur the Calendra was presented before the SDM on 6.12.1995. Admittedly the name of Jasmer Singh, the father of the petitioner which was initially included in the Calendra before presenting it to the SDM, was struck off at the time of presenting it to him since by that time Jasmer Singh had died. It is seen from an (sic) the Calendra that none of the legal representatives of Jasmer Singh has been included as a party to the Calendra. According to the petitioner though they were ordered to be impleaded on the application filed by respondents 3 to 9 on 2.4.1996, no notice was served on them and no opportunity was given to them. These allegations are found in paragraph3 of the petition. In paragraph3 of the reply, it has not been stated that petitioner and other legal representatives of Jasmer Singh were served. On the other hand it is merely stated that Balbir Singh the son of Jasbir Singh (petitioner herein) had appeared in the Court along with other legal representatives. It is not stated as to when they were served and when they appeared and whether they were given sufficient opportunity to file reply. Further Annexure P.3 the order passed by the SDM shows that Balbir Singhpetitionerherein appeared in the Court and the rest of the legal representatives did not appear. This is quite contrary to the stand taken in the reply that Balbir Singh appeared along with other legal representatives, it has also been stated in the orderAnnexure P.3 that no reply was filed by the legal representatives of Jasmer Singh but the counsel for the parties were heard. It is improbable that the petitioner would have remained content without filing a reply because there has been a dispute between the parties and the father of the petitioner had even filed a suit and obtained injunction on 15.6.1995 which was subsequently confirmed on 5.10.1996. But we find that initially the legal representatives of Jasmer Singh were not made parties to the Calendra. The case of the petitioner is that they were made parties only on 2.4.1996 but they were neither served nor given an opportunity to put forth their case. This specific allegation has not been denied in the reply, though it has been stated that the petitioner and the other legal representatives appeared. Therefore, I am of the

view that the petitioner and the other legal representatives of Jasmer Singh should have been given a reasonable opportunity before the learned SDM passed the orders Annexure P.3 and P.4.

11. Further as pointed out already there is an order of Civil Court in Civil Suit No. 627 of 1995 wherein interim injunction was granted in favour of the father of the petitioner which was confirmed after contest. The order of temporary injunction had been passed on 15.6.1995 itself *ex parte*, and the same has been confirmed after contest on 5.10.1995. The order of the Civil Court does not appear to have been brought to the notice of the SDM. When there is an order by the competent Civil Court granting injunction in favour of the petitioner's father and restraining the respondents 3 and 4 herein and others with regard to the same lands it should have been brought to the notice of the SDM. The learned counsel for the petitioner contends that when the Civil Court has passed an order granting an injunction in favour of the father of the petitioner, the SDM was not competent to initiate proceedings and pass the orders Annexure P.3 and P.4 attaching the lands and ordering the Tehsildar to take possession of the lands. In this connection he relies upon the decision of this Court in *Sarwan Singh v. Sub Divisional Magistrate Samana, Distt. Patiala*, 1996(1) RCR 576 wherein this Court relying upon the decision of the Hon'ble Supreme Court in *Dharampal and others v. Ramshri and others*, 1993(1) RCR 696 held that :

"When a Civil Court passes an order of injunction or receiver, it is the Civil Court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the Civil Court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute." This Court also held that "since the civil Court has already passed an order in favour of the petitioner and by virtue of which respondents have been restrained from interfering in their possession, there was no justification with the Sub Divisional Magistrate to initiate proceedings in regard to the land for which injunction had been granted in favour of the petitioner."

So holding, this Court quashed the proceedings under Section 145 Cr.P.C. and the appointment of the Receiver.

12. The Hon'ble Supreme court in *Dharmapal and others v. Smt. Ramshri and others*, 1993(1) RCR 696 held that :

"It is obvious from subsection (1) of Section 146, that the Magistrate is given power to attach the subject of dispute "until the competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof." The determination by competent court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a receiver in respect of the subjectmatter of the dispute pending the final decision in the suit. The

moment the competent Court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency between the order passed by the civil Court and the order of attachment passed by the Magistrate. The proviso to subsection (1) of Section 146 itself takes cognizance of such a situation when it states that "Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of any breach of peace with regard to the subject of dispute." When a civil Court passes an order of injunction or receiver, it is the civil Court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the civil Court it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of the dispute."

13. As against this, the learned counsel for the respondents relied upon decision of this Court in *Ujjagar Singh v. Sub Divisional Magistrate, Malerkotla*, 1994(1) RCR 393 in support of his contention that the proceedings under Section 145 Cr.P.C. are competent. But that was a case where there was a dispute over possession of land and the dispute was pending in the Civil Court also. The Civil Court dismissed the application for ad interim injunction. Since there was imminent danger of disputes relating to possession, the proceedings under Section 145 Cr.P.C. were initiated. Therefore, in those circumstances, it was held that the continuation of the proceedings under Section 145 Cr.P.C. during the pendency of the civil suit will not amount to an abuse of process of Court. Another decision relied upon by the respondents is that rendered in *M/s. Punj Liloyd Pvt. Ltd. v. State*, 1994(1) RCR 470. That again is a case where there was a dispute regarding possession and it was found on facts that there had not been a determination, even tentative, at the interim stage with regard to the rights of the parties and that what the Civil Court had granted was simply an order with regard to the status quo to be maintained by the parties. Therefore, this Court held that "it implies thereby that the parties have been directed to remain there where they are and there is no interim decision with regard to the rights of the parties even by an interlocutory order." It is in these circumstances, the Delhi High Court held that the proceedings under Section 145 Cr.P.C. and the order under section 146 are proper.

14. If we examined the facts of the present case in the light of these decisions, it will be clear that the order passed by the learned Sub Divisional Magistrate cannot be sustained on merits. There is an order of injunction in favour of the petitioner's father restraining the respondents 3 and 4 and others from interfering with his possession. This order was passed long before the Calendra had been filed before the Sub Divisional Magistrate. Therefore, the order of the civil Court granting injunction in favour of the petitioner's father ought to have been taken note of and if so done, the Sub Divisional Magistrate could not have passed the orders impugned in this petition. This is not a case where the parties were ordered to maintain status quo, but there has been a specific order in favour of the father of the petitioner restraining the respondents 3 and 4 herein

not to interfere with his possession. Therefore, when the Civil Court has passed this order then the Sub Divisional Magistrate ought not to have entertained the proceedings under Section 145 Cr.P.C. Had he given sufficient opportunity to the petitioner and the other legal representatives of deceased Jasmer Singh, they would have brought to his notice the orders of the Civil Court, and then I am sure that the learned Sub Divisional Magistrate would not have passed these orders.

15. One other factor is also that the Civil Court passed the order of ad interim injunction on 15.6.1995, confirmed it on 5.10.1995. The father of the petitioner in whose favour the injunction was granted had been killed on 27.11.1995 in respect of which FIR has also been registered. Yet the Calendra was presented on 6.12.1995 without impleading the legal representatives of deceased Jasmer Singh. So we find that in spite of the fact that there is the injunction order, and the person who had obtained the injunction order had been killed, long thereafter i.e. on 29.5.1996 this order attaching the property and ordering the Tehsildar to take possession has been passed. After the Civil Court had passed the order of injunction, it cannot be stated that there was any likelihood of any breach of peace. If anybody disobeys the order of injunction then he would have to be dealt with in accordance with law. The disobedience to the orders of injunction cannot be taken to be a ground for initiating the proceedings under Section 145 Cr.P.C. to the detriment of the person in whose favour an order of injunction has already been passed by the Civil Court.

16. Therefore, in these circumstances, I am of the view that the Calendra and the orders impugned in this petition and passed by the Sub Divisional Magistrate cannot be sustained.

17. The petition is accordingly allowed and the Calendra Annexure P.2, the impugned orders passed by the Sub Divisional Magistrate, on the basis of this Calendra, and the consequential proceedings are quashed.