
(1984) 03 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 936-M of 1984

Bhag Singh

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

Date of Decision : 24-03-1984

Acts Referred:

Citation : (1984) 03 P&H CK 0041

Hon'ble Judges : K.P.S.Sandhu, J

Advocate : Ujagar Singh, G.S. Savra, M.S. Suller, G.S. Punia, Advocates for appearing Parties

Judgement

K.P.S. Sandhu, J.

1. Petitioner Bhag Singh has filed this petition under section 482 Cr.P.C. for quashing the orders Annexure P.2 dated 22.12.1983 passed by the S.D.M., Ropar by which he attached the disputed tubewell under section 146(1) Cr.P.C. and appointed Circle Revenue Officer as Receiver under section 146(2) Cr.P.C. to manage the same and Annexure P.1 passed by the learned Additional Sessions Judge, Ropar dated 4.2.1984 dismissing the revision of Bhag Singh petitioner in which he had challenged the order Annexure P.2 passed by the S.D.M., Ropar.

2. On a police report that there was likelihood of breach of peace as the dispute existed about the possession of the land between the petitioner and the respondents, the learned S.D.M. Ropar issued notice to both the parties under section 145(1) Cr.P.C. to attend his Court and put in their respective claims as regards the fact of actual possession of the disputed land. There was also a tubewell installed in this land from which both the parties were claiming right of water to irrigate their lands. Later on, the learned Magistrate after finding that there was likelihood of breach of peace over the use of the tubewell installed in the disputed land and that it was a case of emergency since the sowing season had set in and both the parties wanted to irrigate their lands from the tubewell, attached the tubewell under section 146(1) Cr.P.C. and ordered the appointment of Circle Revenue Officer as Receiver under Section 146(2) Cr.P.C. vide his order

dated 22.12.1983. The petitioner aggrieved by this order under section 146(1) (2) Cr.P.C. went up in revision before the learned Additional Sessions Judge, Ropar who vide his order dated 4.2.1984 dismissed the revision of the petitioner on the short ground that the order under section 146(1)(2) Cr.P.C. was an interlocutory order and was thus not revisable in view of section 397(2) Cr.P.C.

3. Mr. Ujagar Singh, Sr. Advocate, learned counsel for the petitioner has contended in the foremost that the learned Additional Sessions Judge was wrong in coming to a finding that the order Annexure P.2 was an interlocutory order and as such he was not competent to revise the same. In this regard he has mainly placed reliance on a Supreme Court authority reported as Amar Nath and others v. State of Haryana and another, 1977 C.L.R. (S.C) 242. The facts, which gave rise to a special leave petition before the Supreme Court in the aforesaid case, were that the High Court dismissed the petition in limine and refused to entertain it on the ground that the order of the Judicial Magistrate summoning the appellants (which was impugned before the High Court) was an interlocutory order and thus a revision to the High Court is barred by virtue of subsection (2) of section 397 Cr.P.C. 1973. The Hon"ble Supreme Court while allowing the petition came to a finding that the order of the Magistrate cannot be said to be an interlocutory order and thus does not fall within the mischief of subsection (2) of section 397 Cr.P.C.

4. In Amar Nath's case (supra) their Lordships of the Supreme Court expressly noticed that under the Code there would necessarily be orders which are interlocutory in nature and thus beyond the arena of revision. Without being exhaustive or attempting to specify the innumerable such orders, they observed illustratively as under :

"Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail calling for reports and such other stepsinaid of the proceedings may no doubt amount to interlocutory orders against which no revision would lie under S. 397(2) of the 1973 Code....."

In Kartar Singh and others v. Smt. Pritam Kaur and another, 1984(1) R.C.R. (Criminal) 617 : 1984 Cr. L.J. 248 the specific point for answer before the Division Bench was as to whether the order under section 146(1) and 146(2) of Cr.P.C. was an interlocutory order or not. After considering all the conflicting authorities on the point and also considering Amar Nath's case (supra), S.S. Snadhawalia, C.J., the Presiding Judge of the Division Bench in an elaborate judgment held that an order appointing a Receiver under section 146(2) Cr.P.C. was certainly an interlocutory order as it was nothing but stepinaid in pending proceedings under section 145 of the Cr.P.C. It was further held in this authority that such an order cannot fall in the category of an order intermediate to the final order. In view of this authoritative decision of the Division Bench of this Court I am left with no option but to dismiss the petition and uphold the order of the learned Additional Sessions Judge, Ropar.