
(1990) 11 AHC CK 0079
In the Allahabad High Court
Case No : Criminal Revision No. 301 of 1985

Bind Basni Rai and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 22-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1990) 11 AHC CK 0079

Hon'ble Judges : Srinath Sahay, J

Final Decision : Allowed

Judgement

S. N. Sahay, J.—This revision arises out of proceedings under Section 145, Cr.PC. which were initiated on the basis of a report dated 1771984 submitted by S.O. Zamania. It was stated in the report that there was apprehension of breach of peace on account of dispute between the parties with regard to the possession of certain Abadi land and building. The learned S.D.M. Zamania heard both parties and found that the parties are in joint possession of the property and hence it is not possible to take action under Section 145, Cr.PC. He passed an order dated 2781984, directing proceedings to be started against the parties under Sections 151, 107, and 116, Cr.PC. Ashok and others, who are opposite parties No. 2 to 4, in the present revision made an application in the Sessions Court for revising the aforesaid order of the learned Magistrate. The revision was heard by the learned Special Judge, Ghazipur and was allowed by order dated 2411985. The order passed by the learned S.D.M. was set aside and the case was sent back to him for disposal of matter according to law. The revisionists feeling aggrieved from the order dated 2411985, have come to this Court in revision.

2. I have heard the learned Counsel for the revisionists and the learned Assistant Government Advocate. At the time of hearing, none appeared on behalf of opposite parties No. 2 to 4. It is urged on behalf of revisionist that the view taken by the learned Special Judge is erroneous and proceedings under Section 145, Cr. PC. are not maintainable in respect of joint property. The learned

Counsel for the revisionists has also submitted that a Civil Suit for partition has been brought by opposite parties No. 2 to 4 in respect of the property in dispute and since that suit is still pending, it will not be proper to initiate proceedings under Section 145, Cr.P.C. in respect of the same properties. He has relied on *Ram Sumer Puri Mahant v. State & Ors.*, AIR 1985 SC 472 in support of his contention. It has been held in that case as follows:

"There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the Criminal Court in a matter like the one before us. Counsel for respondents 2 to 5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court the Criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the Civil Court and parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute, multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed"

3. It will appear from a perusal of the judgment of the learned Special Judge that the finding of the learned S.D.M. with regard to the fact that the property in dispute is the joint property of the parties has not been questioned on the other hand, the learned Sessions Judge has stated that it is clear that the properties must necessarily be joint but he had proceeded to observe that it is not necessary that all the collaterals of the family should necessarily remain in joint possession. He had further observed that it is quite possible that the collaterals may remain in separate distinct possession of the property either by partition or even by connivance of each other. It is on the basis of this view regarding possibility of the parties being in separate position that he has set aside the order of the learned S.D.M. and has directed him to proceed under Section 145, Cr.P.C. This was not justified. Unless there was some thing *prima facie* to suggest that one party is in separate and exclusive possession over the property in dispute, there was no occasion to speculate and direct proceedings to be taken on the basis of such speculation. Moreover, the revisionists have filed copy of the plaint to show that Civil Suit for partition has been instituted by opposite parties No. 2 to 4 and this fact regarding the pendency of that suit does not appear to have been challenged by them. In view of the authority quoted above, the continuance of the proceedings under Section 145, Cr.P.C. will not be justified in the circumstances of the case. Moreover, the police report was submitted as far back as 1984, and there is nothing to suggest that apprehension of breach of peace has existed in all these six years. Under these circumstances, the contention of the revisionists has got force that the order passed by the learned Special Judge is erroneous and without jurisdiction and should not be allowed to stand.

This revision application is, accordingly allowed and the order dated 2411985 passed by the learned special Judge is set aside.

Revision allowed.