

(1996) 07 RAJ CK 0009

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 272 of 1996

Chatra Ram and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 15-07-1996

Acts Referred:

Constitution of India, 1950 — Article 141, 144, 215

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 145, 146, 151

Citation : (1996) 2 RLW 611 : (1996) WLC 161 : (1996) 1 WLN 517

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Yadav, J.—It is evident from perusal of the facts of this case that on the basis of order passed u/s 146(1) Cr. P.C. by the learned Magistrate on 3.6.95 the property in dispute was attached on the ground of emergency after passing preliminary order u/s 145(1) Cr.P.C. The learned Magistrate was satisfied about apprehension of breach of peace, therefore, he proposed to proceed u/s 145(1) Cr.P.C.

1-A After service of notice upon respondents No. 2 to 11 it was brought to the notice of learned Executive Magistrate that a regular suit No. 17/94 is pending before a competent revenue court between the parties and in that regular suit the revenue court has granted temporary injunction in favour of the petitioners on 23.9.94 Irrespective of aforesaid facts brought to the notice of the learned Magistrate by way of raising preliminary objection he refused to drop the proceeding u/s 145(1) and 146(1) of Cr.P.C. and rejected their preliminary objection on 14.7.95.

2. Aggrieved against the impugned order passed by learned Executive Magistrate on 3.6.95 and 14.7.95, the answering respondents No. 2 to 11 filed a revision before the learned Sessions Judge, Sirohi who after hearing both the parties set aside the orders passed by the learned Magistrate on 3.6.95 as well as order

dated 14.7.95 vide his order dated 23.1.1996.

3. Aggrieved against the order passed by the learned Sessions Judge, Sirohi on 23.1.1996 the present petition u/s 482 Cr.P.C. has been preferred before this Court.

4. I have heard the learned counsel for the parties at length and perused the orders impugned.

5. The first contention of the learned counsel for the petitioners before me is that since preliminary order passed by learned Executive Magistrate u/s 145(1) and order of attachment on ground of emergency passed u/s 146(1)-Cr.P.C. were inter-locutory orders, therefore, the respondents No. 2 to 11 have no authority to file a revision before the learned Sessions Judge. According to the learned counsel for the petitioners the revision was not entertainable before the learned Sessions Judge.

6. In my considered opinion the argument advanced by the learned counsel for the petitioners has substance. I am of the view that there is express bar u/s 397(2) Cr.P.C. about filing of revision against an inter-locutory order, therefore, the revision was not maintainable. The learned Sessions Judge has illegally interfered with the interlocutory order dated 3.6.95 passed by learned Magistrate as he lacks inherent jurisdiction hence the order passed by him on 23.1.96 is per se illegal, nullity and void ab-initio which deserves to be ignored. Although against inter-locutory order filing of revision is barred u/s 397(2) Cr.P.C. yet such interlocutory order can be challenged u/s 482 Cr.P.C. and can be interfered in rarest of rare cases by the court provided its judicial conscience is shaken with the order impugned.

7. Now the present criminal misc. petition filed u/s 482 Cr.P.C. has to be entertained ignoring the order passed by the learned Sessions Judge on 23.1.96 as my judicial conscience is pricking after looking into the facts and circumstances of the case, under which the learned Magistrate has passed preliminary order u/s 145(1) Cr.P.C. and consequential order of attachment on ground of emergency u/s 146(1) Cr.P.C. The learned counsel for the petitioners is called upon to argue this criminal misc. petition on merits but he expressed his inability to support the order impugned on merits.

8. Learned counsel for the petitioners urged before me that since he has instructions to file this criminal misc. petition u/s 482 Cr.P.C. only for quashing of the order passed by learned Sessions Judge on 23.1.96, therefore, he is not in a position to argue the present criminal misc. petition on merits.

9. It would be pertinent to observe here that instructions by a client to his counsel for invoking inherent jurisdiction of this Court u/s 482 Cr.P.C. shall never be treated to be absolute but shall always be deemed subject to the order passed by this Court after looking into the facts and circumstances of the case in totality. Therefore at this stage the learned counsel for the petitioners cannot be

allowed to say that he has only instructions to file this criminal misc. petition for setting aside the order passed by learned Sessions Judge on 23.1.1996.

10. As a matter of fact the provisions of inherent power envisaged u/s 482 Cr.P.C. are unique and special provisions conferring power to a court of record to administer justice strictly according to its judicial conscience based on law and fair play and in process of doing so to make such orders as may be necessary to give effect to any order under this code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is to be noticed that under other enactments inherent powers are also conferred upon the subordinate courts such as u/s 151 C.P.C. but under Criminal Procedure Code legislature thought it proper to confer inherent power only upon the High Court which is a court of record within the meaning of Article 215 of the Constitution.

11. In my humble opinion once a matter is brought to the notice of this Court u/s 482 Cr.P.C. it is at liberty to make such orders as may be necessary in the circumstance of the case to give effect to any order under this code or to prevent abuse of process of any court or otherwise secure the ends of justice. It does not mean that once it is held that the order passed by the learned Sessions Judge on 23.1.96 is void ab-initio, therefore, this Court cannot pass a justice oriented order in the circumstances of the case to prevent the abuse of the process of the court.

12. It is well to remember that if an order is passed by a court which lacks inherent jurisdiction to entertain such matter, such orders or judgments passed by such courts are nullity. It is further to be remembered that whenever and wherever such orders are sought to be enforced its validity can be challenged and can be ignored even in collateral proceedings see Kiran Singh and Others Vs. Chaman Paswan and Others,

12A. Indisputably a regular suit is pending in the present case between the parties before a competent revenue court and the revenue court in exercise of its power under Rajasthan Tenancy Act, 1955 has passed interim injunction on 23.9.94 in favour of the petitioners. In view of the aforesaid facts and circumstances of the present case it was the duty of all the law enforcing authorities to give effect to the order passed by the competent revenue court on 23.9.94 including the Executive Magistrate. The majesty of rule of law and majesty of an order passed by a competent court of law cannot be allowed to be undermined by the Executive Magistrate by passing the impugned order on 3.6.95 instead of upholding and ensuring compliance of ad-interim injunction dated 23.9.94.

14. In fact every law enforcing authority of District Administration Sirohi Including Executive Magistrate who passed impugned order on 3.6.95 is under legal obligation to ensure the strict compliance of the temporary injunction granted in favour of the petitioners on 23.9.94 instead of resorting the power u/s 145(1) Cr.P.C. and u/s 146(1) Cr.P.C. The act of attaching the property and

appointing receiver in breach of temporary injunction granted by a competent revenue court on 23.9.94 in exercise of its statutory power under Rajasthan Tenancy Act, 1955 in a regular suit is hereby disapproved. In fact such order passed on the ground of emergency also run counter to the spirit of Section 146(2) Cr.P.C.

15. It is true that to arrest apprehension of breach of peace and to maintain public tranquillity is within the exclusive domain of Executive Magistrates as well as the District Administration, therefore, in such situation wherever it is brought to the notice of Executive Magistrates that a regular suit is pending before a competent court involving the question of possession and the parties are capable to approach the said competent court to obtain temporary injunction or to get a receiver appointed for protection of property during the pendency of the trial of such suit or it is brought to their notice that the parties had actually approached such competent court and had obtained an interim injunction or had got a receiver appointed for protection of the property during trial of such suit then instead of invoking their jurisdiction u/s 145(1) and 146(1) Cr.P.C. they are under legal obligation to proceed u/s 107 read with 116 Cr.P.C. to arrest apprehension of breach of peace between the parties.

16. In the instant case irrespective of the fact that it was brought to the notice of the learned Executive Magistrate that a temporary injunction has been passed by a competent court he proposed to proceed u/s 145(1) and 146(1) Cr.P.C. to arrest the apprehension of breach of peace instead of initiating proceedings u/s 107 read with Section 116 Cr.P.C. which is per se illegal and tantamount undermining the majesty of rule of law as well as the majesty of the order passed by a competent court which is impermissible.

17. It is made clear that the object of initiation of proceeding u/s 107 read with Section 116 Cr.P.C. is meant to arrest the apprehension of breach of peace between the parties and to maintain the public tranquillity. The mandatory provisions contained u/s 107 Cr.P.C. reads thus--

107. Security for keeping the peace in other cases.--(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, (with or without sureties) for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

18. Thus the argument of the learned counsel for the petitioners to the effect that in the present facts and circumstances of the case the apprehension of breach of peace between the parties which is within the exclusive jurisdiction of Executive Magistrate can be arrested only by initiating proceeding u/s 145(1) and 146(1) Cr.P.C. is devoid of truth and merit, therefore, it is hereby rejected.

19. There is yet another reason to arrive at the aforesaid conclusion. An identical question arose before the Hon''ble Supreme Court in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, where it is specifically ruled by the apex court that when a civil litigation is pending for the property wherein the question of possession is involved and have been adjudicated initiation of a parallel criminal proceeding u/s 145 Cr.P.C. could not be justified. The parallel proceeding should not be permitted to continue and in the event of decree of civil suit the criminal court should not allow to invoke its jurisdiction particularly when possession is being examined by the civil court and the parties are in position to approach the civil court for interim orders such as injunction or appointment of receiver for protection of the property during the 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 the meaningless litigation.

20. It is important to mention that in case of Ram Sumer Puri Mahant (supra) a decision of the Allahabad High Court was reversed by the apex court where parallel proceedings were allowed to continue. To my mind the aforesaid decision is binding in territory of India to all courts of law and tribunals as a precedent as envisaged under Article 141 of the Constitution. It is also pertinent to refer Article 144 of the Constitution of India which reads thus--

All authorities, civil and judicial, in the territory of India, shall act in aid of the Supreme Court.

21. In my humble opinion the learned Executive Magistrate while passing the order impugned on 3.6.95 was under legal obligation to act in the aid of the Supreme Court pronouncement in the case of Ram Sumer Puri Mahant (supra) and an order passed by him on 3.6.95 contrary to the pronouncement made by the Supreme Court would be perse Illegal within the meaning of Article 144 of the Constitution of India and as such deserves to be quashed to uphold the supremacy of rule of law in a democratic country like ours.

22. Learned counsel for the petitioners in rejoinder has placed reliance on a decision rendered by the apex court in the case of Jhummal alias Devandas Vs. State of Madhya Pradesh and Others, The facts of the aforesaid. case are not applicable in the facts and circumstances of the present case.

23. According to the facts of the case of Jhunamal alias Devandas (supra) an attempt was made by unsuccessful party to set at naught the order passed by the Executive Magistrate u/s 145 Cr.P.C. which is not the case on hand. Secondly, in the present case the petitioners themselves have moved an application for temporary injunction before the competent revenue court and in exercise of its statutory power the revenue court has granted temporary injunction to safeguard the property in question during the pendency of the suit. Thirdly, in case of Jhunamal alias Devandas (supra) it is not possible to ascertain as to whether in that case the question of possession was also being examined by civil court. Lastly it is not possible to deduce from the aforesaid decision that parties in the

case were in position to approach a competent court for interim orders such as temporary injunction or appointment of receiver for protection of the property during the pendency of the dispute.

24. In the penultimate lines of this order it would be relevant to take notice of Section 145(10) Cr.P.C. according to which nothing u/s 145 Cr.P.C. shall be deemed to be in derogation of the powers of the magistrate to proceed u/s 107 Cr.P.C. It appears to me that the provisions of Section 107 and Section 145 Cr.P.C. are counter parts of the same policy to arrest apprehension of breach of peace. The phraseology used u/s 145(10) Cr.P.C. leads towards an irresistible conclusion that ordinarily when an Executive Magistrate receives information about threatened breach of peace between the parties on account of dispute regarding land then he should proceed u/s 145 Cr.P.C. and it is left at his discretion to proceed or not to proceed u/s 107 Cr.P.C. simultaneously but whenever and wherever it is brought to his notice that a suit is pending before a competent court involving question of possession and the parties are either capable to approach such court to obtain interim injunction or to get a receiver appointed or actually one of the party had approached such court and had obtained either temporary injunction or got a receiver appointed for protection of the land in dispute during the pendency of such suit then in such a situation an Executive Magistrate has no option except to proceed u/s 107 Cr.P.C. to arrest the apprehension of breach of peace between the parties. In the latter facts and circumstances of the case it would be meaningless to initiate proceeding u/s 145(1) Cr.P.C. looking to multiplicity of proceeding, unnecessary express to the parties and wasting of public time.

25. Consequently, the order passed by the learned Executive Magistrate on 3.6.95 passing preliminary order u/s 145(1) Cr.P.C. and attachment order on the ground of emergency u/s 146(1) Cr.P.C. are hereby quashed and the instant criminal misc. petition is allowed to prevent abuse of the process of court and to uphold the supremacy of rule of law in a democratic country like ours.

26. Before parting with the order it is observed that if the learned Executive Magistrate is of the opinion that irrespective of temporary injunction granted by competent revenue court there is still apprehension of breach of peace between the parties then in order to arrest such apprehension of breach of peace between the parties he would be at liberty to proceed against the parties u/s 107 read with Section 116 of Cr.P.C.