
(2010) 07 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : CRM No. M 13784 of 2009

Des Raj and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 482

Citation : (2010) 4 RCR(Criminal) 577

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : N.S. Dandiwal, for the Appellant; K.S. Pannu, DAG, Punjab for State and Ms. Gurnam Kaur, Advocate for Respondent Nos. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing of the Order dated 23.07.2007 passed by the Sub Divisional Magistrate, Dera Bassi (Annexure P-4) and the judgement dated 13.01.2009 passed by the Additional Sessions Judge Patiala (Annexure P-9).

2. Facts of the case, in brief, are that the Sub Divisional Magistrate, Derra Bassi vide order dated 27.06.2007 initiated proceedings u/s 145 of the Code of Criminal Procedure and appointed Receiver u/s 146 Cr. P.C. with regard to the land measuring 2 bighas and 10 biswas (49 biswas), compromised in Khasra Nos. 260, 261, 262, 263 and 226, situated in the revenue limits of Village Vaka Mauja, Village Fatehpur Jattan, Tehsil Dera Bassi. Thereafter, the aforesaid order dated 27.06.2007 was withdrawn vide order dated 23.07.2007 (P4) when it was acknowledged that there was an interim order dated 13.01.2007 passed by the Civil Court, Rajpura, granting stay with regard to the khasra Nos. 260,261,262,263 and 226. By the same order i.e. 23.07.2007, Sub Divisional Magistrate, Dera Bassi, initiated the proceedings u/s 145 Cr.P.C. qua the land comprised in Khasra Nos. 224 and 225, situated in the revenue limits of Mauja, Village Fatehpur Jattan, Tehsil Derabasi. Thereafter, the present petitioner filed a

revision petition in the Court of learned Additional Sessions Judge, Patiala against the aforesaid order dated 23.07.2007 passed by the Sub Divisional Magistrate, Dera Bassi. The Additional Sessions Judge, Vide judgement dated 13.01.2009, dismissed the revision petition being not maintainable by observing as under:-

..... whatever the factual position on the spot may be, taking cognizance of the dispute u/s 145 Cr.P.C and appointment of receiver u/s 146 Cr.P.C. are orders of interlocutory nature and as such, as per legal position, the proposition enunciated in the judgement delivered in Ram Kumars case (Supra), Surinder Singhs case (supra) and Mann Babu Dubey's case (supra) referred to above, the present petition is not maintainable. It seems that proper course for the aggrieved party is to file its objection before the Court of learned Sub Divisional Magistrate, Dera Bassi or to file a petition u/s 482 of the Cr.P.C. to get the impugned orders and other proceedings quashed.

3. Accordingly, the present revision petition has been filed u/s 482 of the Code of Criminal Procedure for quashing of the Order dated 23.07.2007 passed by the Sub Divisional Magistrate, Dera Bassi (Annexure P-4) and the judgement dated 13.01.2009 passed by the Additional Sessions Judge Patiala (Annexure P-9).

4. It is pointed out by the learned counsel for the petitioner, which fact has not been disputed, that the Sub Divisional Magistrate, Dera Bassi has not been holding the Court for quite some time even though the objections filed by the petitioner are pending before him.

5. Reply on behalf of respondents Nos. 2 to 5 has been filed. In the aforesaid reply, it is submitted that at the time of passing of the order dated 23.07.2007, there was no order of status quo granted by the civil court with regard to khasra Nos. 224 and 225. It was further argued that the competent authorities are well within their jurisdiction to initiate proceedings under Sections 145/146 of the Code of Criminal Procedure if there is apprehension of breach of peace in garb of the status quo order. Further, reliance was placed on the judgement rendered by this Court in the case of Santokh v. State of Punjab and another reported as 2010 (2) RCR (Cri) 258 to contend that proceedings under Sections 145/146 of the Code of Criminal Procedure cannot be quashed even if the civil Court has passed order of status quo, as long as the Magistrate has recorded a finding that there was strong apprehension of breach of peace regarding dispute between the parties.

6. Learned counsel for the parties have been heard at length.

7. It is the admitted position that the Sub Divisional Magistrate, Dera Bassi has recalled his earlier order dated 27.06.2007 vide which the proceedings under Sections 145 and 146 of the Code of Criminal Procedure were initiated qua khasra Nos. 260, 261, 262, 263 and 226 on account of status quo granted by the Civil Court Rajpura, whereas, proceedings u/s 145 Cr.P.C. were initiated with regard to khasra nos. 224, 225 falling in the revenue limits of Mauja, Village Fatehpur Jattan as these two khasra numbers were not part and parcel of the

civil suit pending in the Court at Rajpura. It is also a fact that subsequently, an amended plaint was moved in the court of Civil Judge, Rajpura for a suit for permanent injunction restraining the defendants, their agents, servants and representatives from or dispossessing the plaintiffs from the compound and bara owned and possessed by the plaintiffs duly shown with letters ABCDEF in the site plan attached with the plaint comprised in khasra nos. 224 and 225, situated within the abadi of Village Fatehpur Jattan, Tehsil Dera Bassi, District Mohali. The Civil Judge, Rajpura, vide order dated 02.02.2008 included the aforesaid khasra Nos. i.e. 224 and 225 in the heading of the plaint along with other suit property by observing :-

3. After hearing their respective contentions and perusing the file, it has been revealed that present case is at its final stage and no issue has been framed so far. As such, if the plaintiffs/applicants will add two khasra numbers i.e. 224 and 225 in the heading of the plaint along with other suit property, then it will not change the nature of the suit merely on the score. As such contention raised by Id. Counsel for defendants/ respondents on this score does not carry any weight, because present amendment is formal in nature and rather same will advance cause of justice and to avoid multiplicity of litigations. Accordingly, application moved by plaintiffs/applicants for amendment of plaint is allowed without expressing any opinion on the main case on merits.

8. Thus, by applying the same analogy, on the basis of which, the Sub Divisional Magistrate had recalled his earlier order dated 27.06.2007 as there was an order passed by the Civil Court granting status quo with respect to khasra numbers 260, 261, 262, 263 and 226, the order dated 23.07.2007 passed by the SDM, Dera Bassi cannot stand qua khasra numbers 224 and 225 as admittedly, the status quo order granted by the Civil Court was extended to these khasra numbers i.e. 224 and 225 by way of an amendment.

9. This Court in the case of Karam Singh v. Sub Divisional Magistrate, Zira reported as 2001(2) RCR (Cri) 617, quashed the proceedings u/s 145 and 146 Cr.P.C. where the civil Court was already seized of the dispute between the parties qua the possession etc. and the order of status quo had been passed and while relying on other similar judgments held, as under:-

8. In Labh Singh and another v. Jaswinder Kaur and others, 1992 (1) CLR 24 , it has been held by this court that where the land in dispute was jointly owned by the parties, the initiation of proceedings u/s 145 Cr.P.C., the order of attachment of the land u/s 146 Cr.P.C. was liable to be quashed. In the reported case, the order of status quo was also vacated by the civil Court on the ground that the parties being joint co- sharers in the land in dispute, the possession of one co-sharer shall be deemed to be that of all the co-sharers. In Babu Singh v. Moti Ram and others, 1991 (1) R.C.R.(Cri) 144 : 1992(1) CLR 48, the civil Court was already seized of the matter and had granted interim stay in favour of Babu Ram, plaintiff, restraining the other wise from interfering in the possession of the disputed land. Under those circumstances, it was held by this Court that

proceedings u/s 145 Cr.P.C. were not maintainable. Accordingly, proceedings u/s 145 Cr.P.C. were quashed by this Court. In *Balbir Singh and others v. state of Punjab and others*, 1999 (4) R.C.R. (Cri) 51 : 1999 (1) CLR 224 , the dispute was between the partners of a partnership firm. It was under those circumstances that it was held by this Court that since all the partners were said to be in possession of the partnership property, it could not be possible to proceed u/s 145 Cr.P.C.. Resultantly, the proceedings u/s 145 Cr.P.C. and the order of attachment u/s 146 Cr.P.C. were quashed by this Court.

9. In the present case, as referred to above, the parties are co-sharers. The civil Court is already seized of the dispute between the parties, regarding the possession etc. the order of the status quo has already been passed. Taking all these facts into consideration, in my opinion, the initiation of proceedings u/s 145 Cr.P.C. or the order of appointment of Receiver, u/s 146 Cr.P.C. would amount to abuse of the process of Court. Resultantly, the present petition is allowed. The proceedings u/s 145 Cr.P.C. and the order of appointing Receiver u/s 146 Cr.P.C. are hereby quashed.

10. No doubt, learned counsel for the respondents has also relied on a judgement rendered by our High Court in the case of *Santokh (supra)* holding a different view. However, the judgement rendered by Hon"ble the Supreme Court in the case of *Ranbir Singh v. Dalbir Singh* reported as 2002 (2) R.C.R. (Cri) 275 : 2002 (2) Criminal Court Cases 187 was not brought to the notice of the learned Singal Bench of the High Court, wherein, it was held as under:-

9. The civil court is already seized of the dispute between the parties, regarding the possession etc. The order of the status quo has already been passed. Taking all these facts into consideration, in my opinion, the initiation of proceedings u/s 145 Cr.P.C. or the order of appointment of Receiver, u/s 146 Cr.P.C. would amount to abuse of the process of Court. Resultantly, the present petition is allowed. The proceedings u/s 145 Cr.P.C. and the order of appointing Receiver u/s 146 Cr.P.C. are hereby quashed.

11. Thus, it is not disputed that the civil Court is already seized of the matter. It is also not disputed that the status quo has been passed.

12. Resultantly and in view of the above discussion, the present petition is allowed and order dated 23.07.2007 passed by the SDM Derabassi ordering the initiation of proceedings u/s 145 and 146 Cr.P.C. qua the land comprised in khasra No. 224 and 225 falling in the revenue limits of Mauja Village Fatejhpur Jattan is hereby quashed.