

(1991) 05 RAJ CK 0040

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 140 of 1991

Gigaram and Others

APPELLANT

Vs

State of Rajasthan, Guman Singh and Others

RESPONDENT

Date of Decision : 06-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 145, 397, 482

Citation : (1991) 1 RLW 595 : (1991) WLN 149

Hon'ble Judges : Farooq Hasan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Farooq Hasan, J.—This criminal Misc. petition arises out of criminal proceedings u/s 145, Cr.P.C. instituted upon a complaint filed on 16.12.1978 by Station House Officer, Police Station Neem Ka Thana. It had been alleged in the complaint inter alia that there was a dispute in between the parties for an agriculture land bearing Khasra Nos. 1825 to 1828 admeasuring in total 13 bighas 4 biswas which admittedly belonged to the khatedari of party No. 1 (non-petitioner Nos. 2 to 7) who are scheduled tribes; and that this land was purchased by the party No. 2 (petitioners) on 11.4.1962 from the party No. 1 through a sale-deed. It had been given out that the petitioners (party No. 2) being Mali belonging to general class, could not have purchase this land by sale from party No. 1 and that both the parties were adamant and adhered to claim possession over the said land and to harvest standing crop by force, as a result of which, there were every likelihood of breach of peace. The Station House Officer recommended proceedings being initiated under Sections 107 & 116, Cr.P.C. against both the parties, in addition to a prayer that keeping in view imminent breach of peace, the land in dispute should be attached. However, the subordinate Magistrate, considering facts & circumstances of the case, though it proper to attach the disputed land and directed the Station House Officer to keep the disputed property under attachment and then deliver the same to the Tehsildar who was

appointed as Receiver. It had been further directed that the parties should lead their evidence in support of their respective claims. Both the parties led evidence. The learned subordinate Magistrate, after considering the evidence adduced by the parties and hearing them, declared the possession of party No. 2 over the disputed land and further directed the party No. 1 not to interfere with their possession and not to dispossess the party No. 1 from the land in dispute till the matter is decided by a competent court. Against the aforesaid order of the subordinate magistrate, dated 20.3.1989, the petitioners (party No. 2) preferred a revision petition before the Additional Sessions Judge, Neem Ka Thana (Sikar), who, vide his order dated 23.1.1991, dismissed the revision petition. Hence this misc. petition.

2. At the very threshold, learned Counsel for the non-petitioner Nos. 2 to 7 (party No. 1) raised a preliminary objection that the present misc. petition is not maintainable in view of the bar contemplated by Section 397(3), Cr.P.C. In support of his submission/objection, Shri P.C. Jain cited decisions in 1990(1) Crimes, 507 and Charanjit Singh and Others Vs. Smt. Gursharan Kaur,

3. As pointed out earlier, the petitioners went in revision against the impugned order of the subordinate Magistrate and the revision petition has been dismissed. Now, obviously, the petitioners seek remedy u/s 482, Cr.P.C. to circumvent the bar of second revision by virtue of the provisions contained in Section 397(3), Cr.P.C. But, in view of the decisions in Charanjit Singh and Others Vs. Smt. Gursharan Kaur, supra, such a litigation cannot be allowed and especially when the petitioners have been unsuccessful before the Revisional Court then they cannot be permitted to agitate the matter when none of the conditions required for the exercise of the inherent powers are present. In these circumstances, the bar imposed by Section 397(3), Cr.P.C. is fully applicable. Thus, viewed, in my opinion, the present misc. petition is not maintainable and the petitioners may resort to recourse for their rights to be adjudicated upon by filing a suit, as has already been observed by the subordinate courts and the impugned orders are not final against the petitioners and they may get a declaration of their right from a competent revenue court. In this view of the matter also, an alternate remedy is available to the petitioners. This is an additional reason so as to suggest that the present misc. petition is not maintainable because inherent powers u/s 482, Cr.P.C. cannot be exercised where alternate remedy is available to the party seeking relief u/s 482, Cr.P.C.

4. That apart, after going through the entire record, it is abundantly clear that the Sub-Divisional Magistrate in proceedings u/s 145, Cr.P.C. found the possession of the non-petitioners after considering the entire matter and then held that the party No. 1 was in possession over the disputed land. The revisional court also affirmed the findings of possession recorded by the subordinate Magistrate. It also clear that it is a case of concurrent finding of fact. And, in this view of the matter, it is not necessary for this Court to go through such findings of fact while dealing with a petition seeking relief u/s 482 Cr.P.C. In view of the

settled principles of law the findings of fact cannot be examined by going into the merits of case, unless the petitioners brings/makes out a case that the subordinate court having no jurisdiction under the Code of Criminal Procedure, decided the matter, in abuse of powers, process of law resulting in any miscarriage of justice. That being so, as stated earlier, that, none of the conditions required for the purpose of exercise of inherent powers u/s 482, Cr.P.C. are present, it will be futile to go into the merits. However, I would like to observe only that the local magistrate who is responsible for maintenance of law and order, is best person who could look into the matter in a proper way and his finding cannot early be interfered with, and can be interfered with unless a good case is placed before the court examining the validity and legality of the order of the subordinate Magistrate.

5. Having benefitted by the enlightments dervied from the decisions in Ranjan Kumar v. State of Karnataka 1990 S.C.C. 537 followed by this Court in Maniram v. Mahavir Prasad 1991 Cri.L.J. 145, I find that this misc. petition is not maintainable by virtue of bar u/s 397(3), Cr.P.C.

6. In the result, this misc. petition being not maintainable by virtue of bar as contemplated in Section 397(3), Cr.P.C. as it is obviously second revision petition by the petitioners, is dismissed.

The record be sent back.