
(1975) 07 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 13 of 1973

Girja Nand

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 28-07-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97
Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 145(6)

Citation : (1975) 4 ILR HP 507

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : P.N. Nag, for the Appellant; Chhabil Dass, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This revision petition is directed against the order of the learned Additional Sessions Judge, Mandi, in a case u/s 145 of the Code of Criminal Procedure in which he has affirmed the order of the Sub-Divisional Magistrate, Mandi. The dispute related to a shop of which the proprietor is Girja Nand Petitioner. He filed eviction proceedings in respect of that shop against Karam Singh tenant and Sis Ram and others sub-tenants. The eviction order was made on 10-4-1970. On 12-12-1970 the Court Bailiff went for delivery of possession. The resistance was offered by one Parkash Chand who claimed to be owner of the business Parkash Chand Sis Ram and he is running a liquor shop in the premises under L-14 licence. Parkash Chand was in possession and hence did not permit the bailiff to deliver possession to Girja Nand. It appears Girja Nand thereafter put his lock on the shop premises and in this way attempted forcible entry against Parkash Chand. These facts gave rise to a litigation u/s 145 of the Code of Criminal Procedure. The shop was attached by the Magistrate on 28-3-1971 and the preliminary order was made on 1-4-1971. After considering the usual written statements, affidavits etc. the Magistrate came to the conclusion that Parkash Chand was in possession and that he should be restored

possession with a direction to Girja Nand that he should not interfere with his possession till he obtains an order from the Civil Court. Against that order made u/s 145(6), Girja Nand came in revision before the learned Additional Sessions Judge. His revision has been dismissed and the order has been affirmed. Against the order of the Learned Additional Sessions Judge, Girja Nand has come up in this second revision.

2. It is abundantly clear that this Court in second revision will not enter into the question regarding appraisal of evidence. The two Courts below have found that Parkash Chand was in actual possession of the shop on 1-4-1971 which is the date of the preliminary order. With that finding on record it has to be seen if Girja Nand could be prohibited from dispossessing Parkash Chand. The learned Counsel contended that Girja Nand obtained a decree of eviction from the Court but that decree was not obtained against Parkash Chand. It was obtained against Karam Singh, Sis Ram and others. As a result to obstruction put up by Parkash Chand a proceeding under Order 21, Rule 97 of the CPC is pending before the Civil Court. The learned Counsel contends that in view of that proceeding, Section 145 could not be applied and no order could be made by the Magistrate. He relies on *Malkappa v. Padmanna* AIR 1959 Mys 122. The foundation of jurisdiction under section. 145 is the breach of the peace which is likely to be committed. No sooner the Magistrate was satisfied that there was an apprehension of breach of the peace, it was his duty to step in and prohibit such breach of the peace. In that connection he could very well proceed u/s 145 and as such the jurisdiction of the Magistrate cannot be questioned. In the peculiar situation of a civil dispute arising in *Malkappa* Petitioner (supra) a learned single Judge held that the Magistrate could not proceed when a civil suit about the identical subject matter was pending. It was further held that the Magistrate had to choose between Section 145 and Section 107 and he should prefer the latter. In the instant case no order has been made by the Civil Court for ejectment of Parkash Chand. The Proceeding under Order 21, Rule 97 of the CPC is still pending. If the Magistrate has given possession to Parkash Chand, he has merely protected his possession which otherwise existed and obviously Girja Nand wanted to make a forcible entry. If the decision of the Civil Court is against Parkash Chand the latter will have to comply with that decision. In the circumstances it is hardly a case for interference. In *Tikuda v. State and Ors.* AIR 1961 Raj 216 it has been rightly held that in a case where a civil proceeding is pending the Magistrate has to act in a cautious manner. He has to weigh and consider whether there is a real apprehension of the breach of peace or one of the parties is taking advantage and may even defeat the right of the other to the prejudice of the suit or proceeding pending in the Civil Court. No such situation arises in the present dispute. Whatever order is made by the Civil Court will be complied with by Parkash Chand. Girja Nand cannot be permitted to take the law in his own hands and take forcible possession pending the civil dispute. To that extent the order of the Magistrate cannot be questioned and it was rightly passed u/s 145(6). Girja Nand is restrained from taking forcible possession from Parkash

Chand till the matter is decided by the Civil Court.

In this view of the matter I am in entire agreement with the finding of the learned Sessions Judge. The revision has no force and the same is rejected.