
(1997) 08 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9738-M of 1995

Gram Panchayat Village Daroli Jat

APPELLANT

Vs

Sub-Divisional Magistrate, Mohindergarh

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Citation : (1997) 4 RCR(Criminal) 624

Hon'ble Judges : K.S.Kumaran, J

Advocate : R.S. Chahar, Surinder Lamba, S.K. Mittal, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. The S.H.O., Police Station, Mohindergarh had presented a Kalendra under Section 145 Cr.P.C. to the Sub Divisional Magistrate, Mohindergarh (1st respondent herein) on the personal D.O. letter written by the Superintendent of Police (annexure P1). In annexure P1, it has been alleged inter alia as follows :

2. Heat is generating between the parties over the possession of agricultural land measuring 277 kanals in Village Daroli Jat, Tehsil and District Mohindergarh. The land was mortgaged by the owners of the land to the ancestors of Smt. Lokesh Devi in 1900. Eleven different mutations have been made in the revenue record regarding this mortgage. The mortgagees, as per revenue record, remained in possession of the land till March, 1993 and had filed a civil suit in the Civil Court at Mohindergarh for getting the ownership rights on the ground that they remained in continuous possession from 1900 to 1992. The Gram Panchayat, Daroli Jat was a party thereto. This case was decided in favour of the mortgagees and the appeal by the other party before the Additional District Judge and the Regular Second Appeal before this High Court went in favour of the mortgagees. The mutation was approved by the revenue authorities in favour of the mortgagees. Uptil November, 1992, the mortgagees i.e. Lokesh Devi etc. were the owners in possession of the land in question. They sold this land to Ajit Singh and others. A cross hurt case over the possession of the land has been reported

against the parties as per FIR No. 93 dated 3.3.1994 at Police Station, Mohindergarh. In November, 1992, a direction was issued by an officer of the Revenue Department to the Gram Panchayat for leasing out the land, and the land was leased out. The other party obtained an order of stay from the Civil Court restraining the Gram Panchayat from leasing out the land in question, but inspite of that, the Gram Panchayat leased out about six acres of the land to a villager.

3. Making the above said allegations, it was requested that the land in question may be attached under Section 145 Cr.P.C. and a Receiver may be appointed. It was also requested that the Gram Panchayat may be directed not to lease out the land.

4. On the basis of this, the SDM passed the order dated 24.3.1995 (annexure P2). The SDM, after referring to the facts referred to above, has mentioned in his order that both the parties were summoned through a preliminary order and were directed to submit their claims and to adduce evidence. He also stated that on the application of Ajit Singh and others, they were also made parties. The order also shows that the Gram Panchayat had produced affidavits and 15 documents, while Ajit Singh and others produced 29 documents. After considering the arguments advanced by both the sides and the documents produced, the SDM passed the order as follows :

"In respect of the land in dispute's possession the case is pending in the Civil Court of Additional District and Sessions Judge, Narnual, and status quo has been ordered with respect to possession. Therefore, the proceedings under Section 145 Criminal Procedure Code are adjourned sine die till the decision by the Civil Court with respect to possession."

5. As pointed out, this order was passed on 24.3.1995, but, within a few days thereafter i.e., on 9.4.1995, the S.H.O., Police Station, Mohindergarh, had presented another Kalendra before the same SDM on the basis of which the same SDM passed the preliminary order on 10.4.1995 stating that from the perusal of the documents, he was satisfied that a dispute is likely to cause breach of peace concerning the same very land. Therefore, he directed the parties to appear on 18.4.1995 and put in their statement of claims or produce the evidence. Respondents 4 to 9 herein have been arrayed as the firstparty and the Gram Panchayat, Daroli Jat has been arrayed as the secondparty.

6. Then the very same SDM passed an order annexure P4 dated 4.5.1995. After making reference to the facts of the case as set out by the parties, to the civil suits filed in respect of the same lands, and also to the three FIRs namely, FIR No. 13 of 1994, FIR No. 383 of 1994 and FIR No. 98 of 1994, he proceeded to consider the matter once again. The SDM observed that there is a big tension about the possession of the land in dispute between both the parties, that there are criminal cases between the parties, that the time to lease out the land is near and the Gram Panchayat has lost upto the High Court and that the Civil Court

has restrained the Gram Panchayat by its order dated 9.12.1994 from interfering in any manner with the possession of this land, and if even now the panchayat leases out the land, there is every apprehension of a dispute arising and, therefore, keeping in view the emergency and the decision of the Civil Court, ordered attachment of the land till a decision is given by the Civil Court and also appointed the Tehsildar, Mohindergarh as Receiver. Annexure P5 shows that the Tehsildar, Mohindergarh had also attached the land on 22.5.1995 and auctioned the land on lease for the year 199596 (for the crops Kharif1995 and Rabi1996) for Rs. 64,000/ in favour of Daya Nand son of Mukh Ram and delivered the possession of the land to him.

7. It is to quash the order dated 4.5.1995 (annexure P4) passed by the Sub Divisional Magistrate, Mohindergarh directing the attachment of land in dispute and appointing the Receiver, and to quash the auction of the land vide annexure P5 dated 22.5.1995, that the petitionerpanchayat has filed this petition under Section 482 Cr.P.C. Respondents 4 to 9 took notice and entered appearance through the counsel.

8. The petitionerpanchayat has alleged in this petition that the land measuring 277 kanals 6 marlas situated in Village Daroli Jat was recorded as Shamilat Deh prior to 1950 and vested in the Gram Panchayat with the coming into force of the Pepsu Village Common Lands (Regulation) Act, 1954. The panchayat also claims that the mutation was sanctioned in its favour on 2.5.1996 and since then, the Gram Panchayat has been recorded as the owner of the land till today and that the panchayat was in actual cultivating possession of the land in dispute and was also leasing the land on Patta. The Gram Panchayat has further alleged that Smt. Lokesh Devi and others were recorded in possession as mortgagees in the revenue record and taking advantage of the same, they filed a civil suit 616 dated 3.10.1991 in the Court of Assistant Collector 1st Grade, Mohindergarh for declaring themselves as owners in possession. According to the Gram Panchayat, the said suit was not maintainable in the Civil Court, but the then Sarpanch of the Gram Panchayat had filed a written statement and suffered a collusive decree in favour of Smt. Lokesh Devi and others. When a new panchayat was constituted, they filed Civil Suit 1129 of 1992 on the file of Sub Judge 1st Class, Narnanl challenging the above said collusive decree wherein there is an order of stay also.

9. The petitioner, after referring to the fresh proceedings under Section 145 Cr.P.C. initiated by the SDM, has alleged that on 18.4.1995, the petitioner appeared before the SDM, Mohindergarh with its Advocate and the case was adjourned to 24.4.1995, when the petitioner's counsel asked for time for filing claim statement. The petitioner has further alleged that the SDM adjourned the case to 25.4.1995 only for hearing arguments, and heard arguments without taking only claim and evidence from either side. The petitioner claims that then the impugned order dated 4.5.1995 (annexure P4) was passed.

10. According to the petitioner, the SDM, has, illegally and without jurisdiction,

passed the second order on the same cause of action within two weeks of the earlier order. According to the petitionerpanchayat a different order has been passed without any change in the circumstances. The petitioner has also alleged that on its application, the SDM stayed the auction till 30.5.1995, but inspite of it, the Tehsildar and auctioned the land in dispute on 22.2.1995 which is also illegal. The petitioner has alleged that the order of the SDM is without jurisdiction since he has no jurisdiction to entertain another application made by the same parties on the same dispute. According to the petitioner, the documents which have been cited in the second application by the SDM, were also before the SDM in the earlier proceedings also.

11. Respondents 4 to 9 have filed a reply referring to the mortgage in favour of the predecessor in interest of Smt. Lokesh Devi and others from 1900, the civil suit filed by Smt. Lokesh Devi decreed on 3.2.1992, and to the fact the appeal and Regular Second Appeal filed against the said decree order by the petitioners were dismissed.

12. The respondents have also alleged that in the civil suit filed by Kamal Singh against Smt. Lokesh Devi, an order to maintain status quo was passed by the trial Court and the appeal against the same was dismissed by the District Judge, and that the civil revision filed before the High Court by Kamal Singh in which the Gram Panchayat was the respondent, was also dismissed by the High Court. Smt. Lokesh Devi filed a civil suit 337 of 1993 against the Gram Panchayat and the trial Court allowed the stay application restraining the Gram Panchayat from interfering in the suit land in any manner. FIR No. 13 dated 7.1.1994, FIR No. 93 dated 3.3.1994 and FIR No. 383 dated 11.11.1994 have been registered between the parties. The petitioner have further alleged that the SDM has referred to the fact that the time for the Gram Panchayat to auction the land was near and, therefore, the provisions of Sections 145 and 146 Cr.P.C. were to be invoked, that there was apprehension of breach of peace and, therefore, the order had to be passed. The orders passed by the Sub Divisional Magistrate, Mohindergarh are legal and the same were not passed in connivance with these respondents. It is wrong to say that there was no change in the circumstances, because there was always an apprehension of breach of peace. That is why the SHO, Mohindergarh requested for immediate action under Sections 145, 146 Cr.P.C. so that peace could be maintained.

13. The petitioner has also filed replication making necessary denials and reiterations.

14. I have heard the counsel for both the sides and perused the records.

15. I have narrated above the facts leading to this petition and, therefore, it is unnecessary to repeat them. The main contention of the petitioner is that between the same parties and with reference to the very same property the SDM passed an order under Section 145 Cr.P.C. on 24.3.1995 that the proceedings under Section 145 Cr.P.C. are adjourned sine die till decision by the Civil Court

with respect to the possession, since with regard to the possession of the land in dispute, the case is pending before the Additional District and Sessions Judge, Narnaul and status quo has been ordered with respect to possession. The learned counsel for the petitioner, therefore, contends that it is not open to the very same SDM to initiate proceedings under Section 145 Cr.P.C. once again with reference to the very same property in dispute and between the very same properties on a Kalendra filed on 9.4.1995, i.e. within a period of about two weeks and pass an order directing the attachment of the properties in dispute and appointing the Tehsildar as the Receiver. The petitioner further contends that in view of the fact that the SDM had no jurisdiction to pass such order, the Tehsildar was not entitled to attach and auction the property. The petitioner also contends that between the two crucial dated i.e. 24.3.1995 when the earlier order was passed by the SDM adjourning the proceedings under Section 145 Cr.P.C. sine die till the decision of the Civil Court, 9.4.1995 and when the second order of the SDM initiating the proceedings under Section 145 once again was passed, no change had also taken place. In these circumstances, the learned counsel for the petitioner contends that the second proceedings initiated under Section 145 by the SDM and the order passed by him are without jurisdiction and not valid.

16. In this regard, the learned counsel for the petitioner relied upon the decision in *Munawar Bhat v. Gulla Shah and others*, AIR 1967 J&K 129, wherein it was held as follows :

"If once the dispute pertaining to this land had been decided by a competent Court, namely, that of the ADM, Anantnag, no fresh proceedings under the same section could lie, muchless could an order of attachment be passed in such a case."

That was also a case where there were proceedings under Section 145 Cr.P.C. about the same property between the parties. That dispute was finally decided by the ADM, Anantnag on 15.1.1963 and those proceedings had culminated in a compromise presented before the learned ADM on that day. But subsequently, an application under Section 145 Cr.P.C. was made on 11.9.1965 without making any mention of the previous proceedings, on which the Munsif Magistrate, Anantnag passed an order of attachment in the proceedings taken by him on the application under Section 145 Cr.P.C.

17. It was in these circumstances the High Court of Jammu and Kashmir passed the order that no fresh proceedings under the same section could lie muchless could the order of attachment be passed in such a case.

18. Another decision relied upon by the learned counsel for the petitioner is *Elimuddin Sarkar v. Umed Ali Bepari and others*, AIR 1936 Calcutta 659. That was a case where in a dispute concerning certain land between two parties, an order under Section 145(6) Cr.P.C. was made in favour of one of the parties. In a subsequent dispute relating to the same property between the same parties or

between the parties deriving their interest from same parties, the Magistrate reversed the order made in the former dispute. It was held as follows :

"The Magistrate"s order was wrong. The two disputes being related to the same property and between same parties or parties deriving their interest from same parties, the order in the former dispute was binding on the parties in the subsequent dispute. Consequently as provided by Section 145(6) the party declared to be entitled to possession in the former dispute was entitled to be protected against disturbance of such possession until evicted therefrom in due course of law; otherwise it would be possible for the opposite party to continue to harass his opponents by instituting successive proceedings under Section 145. The party alleging that it was aggrieved had its remedy in a Civil Court, where the questions of title and possession could be settled as between contending parties."

19. The learned counsel for the petitioner also relied upon the decision in *Ambika Thakur and others v. Emperor*, AIR 1939 Patna 611, wherein it was held that where an order under Section 145 had been passed and the possession of a party had been declared under it, the Magistrate has the jurisdiction to start fresh proceedings under Section 145 if the party to it was not a party to the former proceeding.

20. The learned counsel for the petitioner also relied upon a decision of this Court in *Sardul Singh and others v. The State*, 1974 PLR Vol. LXXVI 345, wherein it was held that there is no binding rule of evidence to preclude the Court in a subsequent criminal proceeding to consider and give its findings on any relevant fact in issue, the Court, should however never entertain the plea of a party which was one of the parties to Section 145 proceedings in which the other side had been found to be in actual possession of the land in dispute (the possession regarding whereof happens to be in issue in subsequent criminal proceedings between the same parties) and had been prohibited by the Magistrate from disturbing the possession of other party over the land otherwise than through due process of law.

21. These decisions cited above clearly go to support the contention of the learned counsel for the petitioner that fresh proceedings under Section 145 Cr.P.C. with reference to the very same property in dispute and between the same parties or persons claiming through them are not maintainable when the dispute between the same parties with regard to the same property has been decided on way or the other on the previous proceedings under Section 145 Cr.P.C. This is especially so in this case when within about two weeks, the very same SDM had passed an order appointing the Receiver attaching the property, while in the previous proceedings between the parties, the SDM had adjourned the proceedings sine die to await the result of the Civil Court, after making reference to the various disputes between the parties in Civil and Criminal Courts and also to the set of documents relied upon by the parties.

22. As against this, the learned counsel for the respondents 4 to 9 relied upon the decision of the Patna High Court in Mahabir Singh and others v. Emperor, AIR 1934 Patna 565, wherein it was held that it is the duty of the criminal Court to respect, maintain and preserve possession given by the Civil Court, and it is the duty of the Criminal Court to give all the help provided by law to the man who has been put in possession of a property by the Civil Court. The learned counsel for the respondents 4 to 9 after referring to the civil proceedings, contended that in view of the decision in the civil proceedings referred to above which have gone in favour of the predecessorintitle of the respondents 4 to 9, the Criminal Court is bound to protect them by passing the order. But the question is whether the SDM was entitled to pass subsequent order within a period of about two weeks after having held that the proceedings under Section 145 Cr.P.C. are adjourned sine die to await the decision of the Civil Court. The decisions cited by the petitioner go to show that the SDM has no jurisdiction to entertain the fresh proceedings under Section 145 Cr.P.C. when he had already decided the proceedings between the same parties with reference to the same property in dispute in one way or the other.

23. The learned counsel for respondents 4 to 9 also relied upon a decision of the Calcutta High Court in Haripado Mazumdar and others v. Dhani Ahmad Sarkar and others, AIR 1935 Calcutta 494, wherein it was held that the question to be taken into consideration by the Criminal Court under section 145 Cr.P.C. is the question as to the present possession of the parties concerned and hence the order made in the previous proceeding under Section 145 Cr.P.C. does not and cannot legally bar the initiation of a fresh proceedings, if there be reasonable grounds for such initiation as contemplated by law. But a careful perusal of the facts mentioned in this decision shows that the previous order was passed in the year 1919 made under Section 145 of the Criminal Procedure Code. The Court held that the said order will not stand in the way of the Magistrate to initiate fresh proceedings under Section 145 Cr.P.C. The fresh proceedings appear to have been taken in the year 1934. Therefore, the Court held that the question as to the present possession has to be considered in a proceeding under Section 145 Cr.P.C. and, therefore, the order passed in 1919 will not preclude the Magistrate from starting fresh proceedings. Therefore, this decision will not be applicable to the facts of the case on our hand. As pointed out already, the earlier order was passed by the Magistrate under annexure P2 on 24.3.1995 adjourning the proceedings sine die. On 9.4.1995 itself, the fresh Kalendra was filed and the Magistrate initiated fresh proceedings in about 16 days for which there was no justification. The various civil disputes and the criminal proceedings referred to in the subsequent order dated 4.5.1995 had all taken place long prior thereto and also prior to the previous proceeding and, therefore, there was no justification for initiating the fresh proceedings. Further, on the basis of the fresh Kalendra presented before him on 9.4.1995, the SDM initiated proceedings by his order dated 10.4.1995 (annexure P3) wherein he directed the parties to appear before him on 18.4.1995 and put in their claims or produce the evidence. The

contention of the petitioner is that on 18.4.1995, the petitioner appeared before the SDM through its counsel and the case was adjourned to 24.4.1995 and on 24.4.1995, the counsel prayed for time for filing the claim etc., but the learned SDM adjourned the case to 25.4.1995 for arguments, heard arguments on 25.4.1995 without taking any claim or evidence from either side, and passed the order on 4.5.1995. The allegations in this behalf are found in paragraph9 of the present petition. In reply to this para, respondents 4 to 9 have only stated that paragraph9 of the petition is denied as the SDM passed the order in a legal way and appointed the Receiver in view of the facts and circumstances of the case. The allegations that the arguments were heard without permitting the parties to file a claim and produce the evidence, is not disputed specifically in the reply. This is also a point which goes in favour of the petitioner. In these circumstances, I am of the view that the Sub Divisional Magistrate had no jurisdiction to initiate fresh proceedings and, therefore, the orders of attachment and the appointment of a Receiver passed by him are also without jurisdiction and invalid. Consequently, the attachment and auction of the land by the third respondent Tehsildar will also be without jurisdiction and invalid.

24. Accordingly, this petition is allowed quashing the impugned order dated 4.5.1995 (annexure P4) passed by the SDM, Mohindergarh (first respondent) and also quashing the attachment and auction of the land annexure P5 by the Tehsildar (third respondent).