
(1995) 07 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14525-M of 1994 & Criminal Miscellaneous No. 1062 of 1995

Gursahib Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Citation : (1996) 1 RCR(Criminal) 127

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

Advocate : J.S. Dhillon, Ashish Aggarwal, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. Crl. Misc. 14525M/1994 is a petition filed under Section 482 of the Code of Criminal Procedure for quashing the proceedings under Section 145, Cr.P.C. initiated by the Sub Divisional Magistrate, Assandh, Karnal District (second respondent herein) and for quashing the notice issued by him to the petitioners in the said proceedings.

2. The facts that are relevant for the purpose of this case are as follows :

3. The petitioner Gursahib Singh and respondents No. 3 and 4 namely; Baldev Singh and Harjit Singh are sons of Iqbal Singh. The petitioner claims that he is the owner of agricultural land measuring 48 K comprised in Khewat No. 430, Khatauni No. 702, situate in village Sheikhupura. According to him, the said land was the joint property of himself and his father Iqbal Singh and others; that Iqbal Singh executed a Will dated 8.6.1991 in his favour; that on the death of his father he (the petitioner) inherited the share of his father and continued to be in possession of the said land. The petitioner further claims that mutation was also sanctioned in his favour on 29.11.1992. He claims that since respondents No. 3 and 4 disputed his title, he (petitioner) filed a civil suit in the Court of Sub Judge 2nd Class Karnal on 11.6.1994 along with an application under Section 39 Rules 1 & 2, CPC seeking an interim injunction. An ex parte order of injunction was

granted on 11.6.1994 itself and later on, after contest, the same was made absolute on 12.8.1994 (Copy Annexure P.2). The petitioner claims that respondents 3 and 4 approached the local police and got false report given under Section 144, Cr.P.C. to the effect that there was a likelihood of breach of peace and so, proceedings under section 145, Code of Criminal Procedure, should be taken. The petitioner further claims that the Station House Officer of Police Station, Assandh, submitted a report to the Sub Divisional Magistrate Assandh on 29.7.1994 (Copy Annexure P.3); that the Sub Divisional Magistrate without perusing the record or passing any preliminary order as required under Section 145(1), Cr.P.C. and without application of mind, issued notice to the petitioner to attend his court on 6th September, 1994 (Copy Annexure P.4).

4. It is for quashing these proceedings initiated by the Sub Divisional Magistrate (2nd respondent) under Section 145, Cr.P.C. and the notice issued pursuant thereto that this petition has been filed.

5. The first contention of the counsel for the petitioner is that before issuing a notice asking the petitioner to appear in proceedings under Section 145, Cr.P.C. the Magistrate has not only to satisfy himself that there exist grounds for initiating proceedings under Section 145, Cr.P.C. but also record his reasons as to how and why he was satisfied about the grounds to initiate such proceedings, and then only could issue a notice asking the parties to appear before him. The second point urged by the petitioner is that when the Civil Court has after enquiry confirmed the order of injunction granted in favour of the petitioner and against respondents 3 & 4 with reference to the same very property, the magistrate could not have initiated the proceedings under Section 145, Cr.P.C. especially when the report submitted by the police itself indicates that suits have been filed not only by the petitioner but also by respondents 3 & 4.

6. But, the contesting respondents contend that the Magistrate, has issued a notice only after satisfying himself about the existence of likelihood of breach of peace and after recording the reasons for the same in his order and, therefore, the first objection raised by the petitioner is not acceptable. So far as the second objection is concerned, the contesting respondents contend that mere pendency of a civil writ with reference to the same property between the contesting parties is not a ground to hold that the Magistrate should not have initiated the proceedings inasmuch as there has been no final adjudication of the right or title to the property and also regarding the possession.

7. I have heard the counsel for both sides. I find from Annexure P4 that the learned Magistrate has observed that he has gone through the report of the police, perused the other papers attached with the report and is satisfied that there is a dispute between the parties over the possession of the concerned landed property, and that there is a likelihood of breach of peace. So observing, he directed the parties to attend the Court on 6.9.1994 and put in their written statement with the relevant records. It is this order that the petitioner before me wants to be quashed on the ground that the learned Magistrate has not passed a

proper preliminary order by giving valid reasons and also on the ground that the Civil Court has passed orders in favour of the petitioner in respect of the same property. The learned counsel for the petitioner also relied upon the decisions in *Sri Ram and others v. The State & others*, AIR 1958 Punjab 47, *Dalip Singh v. State*, 1973(1) CLR 363 and *Anant Ram Nanda v. The State* and another, 1986(1) Recent Criminal Reports 126 : 1986(1) CLR 632 , in support of the contention that the Magistrate must not only say that he is satisfied that there is likelihood of breach of peace but also record the reasons. As I pointed out already, the learned Magistrate in this case has mentioned in his order that he was not only perused the report of the police but also the other papers attached thereto and that he is satisfied that there is likelihood of breach of peace. But, in the cases relied upon by the petitioner, no such preliminary order was passed, but either an order for restoration of possession or for attachment had been passed. In the decision reported as *Anand Ram Nanda (supra)*, there was an order of attachment without even a notice to the petitioner before the High Court. In the decision reported as *Dalip Singh's case (supra)*, there was an order to restore possession by issuing a warrant of possession without a preliminary order u/s 145(1) of the Crl. P.C. In the decision reported as *Sri Ram's case (supra)* also, there was an order to put one of the parties in possession without a preliminary order u/s 145(1), Cr.P.C. As pointed out already, in the circumstances of the present case, there is only an order that the parties should appear before him and file their written statement. There is no other order either against the petitioner or the respondent. The parties can appear before the learned magistrate and put forward their case. In fact, it has been alleged in the counter filed on behalf of the State (1st respondent) that both the parties have in their appearance before the learned Sub Divisional Magistrate, filed their respective objections, and the case is fixed for arguments. In such circumstances also, it is certainly premature for the petitioner to approach this Court for quashing the notice issued by the Magistrate to appear before him, especially when he has already appeared and put in his objections before the learned Magistrate.

8. The second objection of the petitioner is that there are Civil proceedings pending between the parties and that the Civil Court has passed an order in favour of the petitioner granting interim injunction in one of the cases, and therefore, the proceedings under section 145, Cr.P.C. are not maintainable. It is also a matter which can be raised by the petitioner before the learned Sub Divisional Magistrate. If, in case the Magistrate finds that this objection raised by the petitioner is valid, he will certainly pass appropriate orders. In these circumstances, I find that this is not a fit case for quashing the notice and the consequential proceedings before the Sub Divisional Magistrate. The petition (Crl. Misc. No. 14525M/94) is accordingly dismissed. The parties are, however, at liberty to put forward such pleas as may be open to them under the law before the learned Magistrate.

9. Respondents 3 and 4 have filed Crl. Misc. No. 1062 of 1995 for placing on record the order of the learned Addl. Sessions Judge District Judge, Karnal. In

view of the dismissal of the main petition, it is not necessary that this document should be placed on record of this file. However, it is open to respondents No. 3 and 4 to file it before the learned Sub Divisional Magistrate if they are so advised.