
(1996) 04 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17512-M of 1994

Hakam Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:

Citation : (1996) CrLJ 3890 : (1996) 2 RCR(Criminal) 362

Hon'ble Judges : P.K.Jain, J

Advocate : H.S. Gill, P.S. Kang, G.S. Gill, Ramanjit Singh, Advocates for appearing Parties

Judgement

P.K. Jain, J.

1. This petition has been filed under section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") for quashing the calender (Annexure P2) filed under section 145 of the Code, the order dated 8.11.1994 (Annexure P5) passed by Sub Divisional Magistrate, Payal as well as subsequent proceedings thereon.

2. The necessary facts for the disposal of this petition are that the petitioners are grandsons and respondents No. 2 and 3 are the sons of Dilip Singh.

Bakshish Singh, respondent No. 4 is the real brother of Dalip Singh and is issueless. Admittedly, Dalip Singh and Bakshish Singh jointly own agricultural land situated in villages Dhamot and Myani. The dispute between the parties relates to the land owned by Shri Bakshish Singh respondent No. 4 herein.

3. According to the petitioners they had purchased the share of Bakshish Singh vide two registered sale deeds dated 10.9.1992 and they are owners and in possession of the said land. They filled a civil suit on 8.4.1993 for a decree of permanent injunction restraining respondents No. 2 to 4 and Dalip Singh from interfering in the possession of the petitioners over the said land. The interim injunction is stated to have been granted in their favour by order dated 16.7.1993 (Annexure P1).

On 13.12.1993 Station House Officer of the Police Station Payal apprehending the breach of peace between the petitioners on the one hand and respondents No. 2 to 4 on the other forwarded a calendar under section 145 of the Code to the Sub Divisional Magistrate, Payal. Notice under section 145(1) of the Code was issued to the parties. The petitioners appeared before the Sub Divisional Magistrate but as regard the respondents, the report was what they had shifted their transport business at Indore and the house of Pyara Singh and Karnail Singh was found locked. The petitioners represented before the said Sub Divisional Magistrate that the land in dispute was lying vacant since long and there had not been any dispute which might be the cause of breach of peace. Consequently the Sub Divisional Magistrate did not think it proper to prolong the proceedings and dropped the same by order dated 1.8.1994, (Annexure P.3).

4. On. 5.11.1994, Station House Officer, Payal filed an application (Annexure P.4) that the complaint be heard again and proceedings under section 146 of the Code be taken and possession of the land be delivered to the real owner. On 8.11.1994, the Sub Divisional Magistrate, without any notice to the parties or atleast to the petitioners passed the impugned order (Annexure P.5) whereby the complaint/calendar filed under section 145 of the Code was ordered to be restored and notices under section 145(1) of the Code were issued to the parties.

5. The petitioners have challenged the aforesaid order on the ground that once the proceedings under Section 145 of the Code were dropped by the Sub Divisional Magistrate, he had no power or jurisdiction to restore the same and take any action thereon. It has been further stated that in view of the pendency of the civil suit filed by the petitioners and the interim injunction having been passed in their favour, the proceedings under section 145 of the Code ought not to have been initiated afresh and the appropriate remedy to take action was under section 107/151 of the Code.

6. Notice of motion was given to the respondents. In reply respondents No. 2 to 4 have stated that the order Annexure P.3 dropping the proceedings was passed on facts manipulated by the petitioners and was illegal, that the order (Annexure P5) restoring the original complaint is legal and valid inasmuch as there was apprehension of breach of peace and question of possession was yet to be decided by the Sub Divisional Magistrate as required by Section 145 of the Code. It has been further pointed out that a similar calendar under section 145 of the Code was filed by the police in respect of the land situated in village Myani which proceedings were dropped by the Sub Divisional Magistrate, Ludhiana and these respondents have filed a revision which is pending in the court of Sessions Judge, Ludhiana. It has been further stated that against the order (Annexure P.3) these respondents have filed a revision petition which is also pending in the Court of Sessions Judge, Ludhiana and the petitioners have been served and have put in appearance before the said court in those proceedings. On merits it has been stated that respondent No. 4, being issueless wanted to sell his share in the land and accordingly entered into an agreement to sell with respondents. No. 2 and 3,

that after receiving earnest money respondent No. 4 had delivered the possession of the land to these respondents in part performance of the agreement, and that the petitioners in conspiracy and playing fraud on respondent No. 4 got a power of attorney dated 22.6.1992 executed in favour of Kimat Singh registered on 13.7.1992 and then got the sale deed executed so as to deprive the respondents No. 2 and 3 of their right to purchase the said land. It is further stated that respondent No. 4 has also filed civil suit challenging the legality and validity of the power of attorney and the two sale deeds alleged to have been executed on the basis of that power of attorney in favour of the petitioners.

7. I have heard the learned counsel for the parties and have gone through the record.

8. Admittedly civil and criminal litigation regarding the land in question is pending between the parties in different courts. It is also conceded at the Bar that both the parties have been bound down under section 107/151 of the Code. It is also not disputed that in these proceedings the question of title of the land is not to be decided.

9. The only question which falls for decision by this court is whether the order dated 8.11.1994 (Annexure P5) passed by the Sub Divisional Magistrate, Payal restoring the complaint filed under section 145 of the Code which was dropped by order dated 1.8.1994 (Annexure P.3) is legal and valid. After giving my careful thought, my answer is in the negative. The relevant portion of the order dated 1.8.1994 (Annexure P.3) reads as under :

"It appears from the said report that none of the persons of party No. 1 resides in the village but are doing business outside. Hukam Singh party No. 2 stated that the land is lying vacant since long and in this connection there has never been any dispute between them which may be cause of breach of peace. Therefore, it does not appear to be proper to prolong the proceedings. Therefore, the proceedings are dropped and offence under Section 145 Cr.P.C. dated 10.5.1994, is withdrawn."

The relevant portion of the application dated 5.11.1994 (Annexure P.4) filed by the Station House Officer of Police Station Payal reads as under :

"On 1.8.1994, the complaint under Section 145 Cr.P.C. dated 10.5.1994, was withdrawn but no finding regarding the land was given. Therefore, it is submitted that the complaint be heard again and proceedings under Section 146 Cr.P.C. be taken and the possession of the land be delivered to the real owner."

On the aforesaid application the Sub Divisional Magistrate passed the impugned order (Annexure P.5) the relevant portion of which is as under :

"I accept the above prayer and order that the complaint under Section 145 Cr.P.C. be restored and notice under Section 145(1) Cr.P.C. be issued. So far as action under Section 146 Cr.P.C. is concerned, when the parties appear and

submit their replies to the notices, the same will be considered. Notice be issued for 28.11.1994."

10. From a bare reading of the relevant portions of the two orders passed by the Sub Divisional Magistrate alongwith the application (Annexure P.4) filed by Station House Officer, Payal on 5.11.1994, it is evident that the Sub Divisional Magistrate has restored the original complaint (Annexure P.2) filed under section 145 of the Code on 13.12.1993. Once the complaint under section 145 of the Code had been dropped by order dated 1.8.1994 (Annexure P.3) the Sub Divisional Magistrate became functus officio and had no power or jurisdiction under any provisions of the Code to restore it and to initiate any action thereon. The said Sub Divisional Magistrate had even no inherent powers to revive the complaint which has been dropped by him earlier.

11. In *Bindeshwari Prasad Singh v. Kali Singh*, AIR 1977 SC 2432 the apex Court had stated the law as under :

"... Even if the Magistrate had any jurisdiction to recall this order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in the Criminal P.C. of 1898 (which applies to this case) empowering a Magistrate to review or recall an order passed by him. Criminal P.C. does not contain a provision for inherent powers, namely Section 561 A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil P.C. the subordinate criminal Courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdictions recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision. In fact, after having passed the order dated 23.11.1968, the Sub divisional Magistrate became functus officio and had no power to review or recall that order on any ground whatsoever. In these circumstances, therefore, the order even if there be one, recalling order dismissing the complaint was entirely without jurisdiction."

While affirming the aforesaid view expressed in the case of *Maj. Genl. A.S Gauraya and another v. S.N. Thakur and another*, AIR 1986 SC 1440 their Lordships held as under :

"So far as the accused is concerned, dismissal of a complaint for nonappearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction, to restore the case. A second complaint is permissible in law if it could be brought within the limitations imposed by the Supreme Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar*, AIR 1962 SC 876. Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal P.C. does not contain any provision enabling the criminal court to exercise such an inherent

power. Also, what the Court has to see is not whether the Code contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have."

In view of the law laid down by their Lordships of the Supreme Court of India in the aforesaid decisions, it cannot be disputed that once the Sub Divisional Magistrate had dropped the proceedings/complaint filed under section 145 of the Code, for whatever reasons it may be, the same cannot be restored or revived by him. It is correct that a fresh complaint/calender under section 145 of the Code could have been filed if there was a fresh apprehension of breach of peace felt by the police, but the application dated 5.11.1994 (Annexure P.4) was filed with a prayer to restore the original complaint to initiate action thereon. The same cannot be said to be fresh complaint on a fresh cause of action. In these circumstances, I have no option but to hold that the order dated 8.11.1994 (Annexure P.5) passed by the Sub Divisional Magistrate, Payal whereby the complaint (Annexure P.2) was restored and notice under section 145 of the Code issued to the parties, is illegal being without jurisdiction and liable to be set aside.

12. It is not disputed that the respondents herein have already filed a revision petition against the order dated 1.8.1994 (Annexure P.3) which is pending in the court of the Additional Sessions Judge, Ludhiana and the petitioners herein have put in appearance on 2.2.1995 in those proceedings. In view of the pendency of the revision petition it is not just and proper for this court to give any finding as to whether the original complaint filed under section 145 of the Code could or could not be dropped for the reasons mentioned by the petitioners in their present petition. It shall be open to the petitioners to raise all pleas available to them under the law before the Additional Session Judge in those proceedings.

13. For the foregoing reasons this petition is allowed in part. The order dated 8.11.1994 (Annexure P.4) passed by the Sub Divisional Magistrate, Payal, is hereby quashed. Both the parties are at liberty to raise all their pleas mentioned in the present pleadings in the revision proceedings pending in the court of Additional Sessions Judge, Ludhiana. The petition stands disposed of.