
(1998) 02 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 129 of 1996

Inder alis Indra

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Citation : (1998) 2 RCR(Criminal) 401

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

Advocate : Ajai Lamba, A.R.S. Sidhu, H.S. Bhullar, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. On 29.1.1996, the Sub Divisional Magistrate, Abohar, passed an order under Section 145(1) and Section 146 of the Code of Criminal Procedure against the privaterespondents 3 to 9 herein in respect of the lands in dispute. He observed that from the police report of the Station House Officer, Police Station Sadar, Abohar, corroborated by his statement, he was satisfied that a dispute likely to cause breach of peace exists between the parties regarding possession of the land in dispute measuring 61 acres (as described in the said order) in the village Dotrianwali. He directed the petitioners No. 1 and 2 herein and some others (as firstparty) and the respondents No. 3 to 9 herein (as secondparty) to put in their claims/objections/documents regarding the actual possession of the lands in question. The learned SubDivisional Magistrate also observed that from the perusal of the report and the statement of the Station House Officer, he found the case as of emergent nature and, therefore, attached the lands in dispute and appointed the Tehsildar Abohar as Receiver to look after the same.

2. But on 22.2.1996 he passed the order impugned in this revision. The learned counsel for the present petitioners filed their claim. He heard the counsel for the parties, went through the records and took note of the fact that Receiver had not taken possession. He recorded the statement of the Station House Officer, Police Station Sadar and held that the statement and the report were contradictory to

each other. He did not find any reason to proceed further with this calandra and held that there was no necessity to proceed under Section 145 Cr.P.C. in this case.

3. That is why the petitioners, who were the firstparty, have come up on revision. According to the petitioners, they are cosharers in possession of the agriculture lands measuring about 61 acres, and that the private respondents 3 to 9 have no concern with this property. They claim that while the 5threspondentIndu Bala is the wife of the secondpetitionerRajinder Kumar, the other respondents are her close relations, and are bent upon grabbing the lands in question unlawfully. The petitioners also claim that the secondpetitioner filed a suit before Sub Judge Ist Class, Abohar, for permanent injunction restraining the defendants/respondents therein from interfering with his possession and the learned Sub Judge had also passed the adinterim injunction order on 26.10.1995 vide annexure P1. The petitioners claim that since they apprehended that the respondents may forcibly disturb their possession, the firstpetitionerInder alias Indra moved an application dated 16.1.1996 before Station House Officer, Police Station Sadar, Abohar (annexure P2) who put in a Calandra before the Sub Divisional Magistrate, Abohar under Section 145 of the Code of Criminal Procedure to avoid further breach of peace. According to the petitioners the respondents 3 to 9 being influential persons, the Tehsildar did not take possession of the land attached in pursuance of the orders dated 29.1.1996 passed by the Sub Divisional Magistrate, Abohar, and since the family of the petitioners were involved and arrested in a criminal case, the respondents have taken possession of the lands in question in violation of the injunction order dated 26.10.1995 passed by the learned Sub Judge, Abohar.

4. The petitioners contend that the impugned order is not a speaking order and does not specify as to what was the inconsistency between the report of the Station House Officer and his statement.

5. The privaterespondents filed Criminal Misc. No. 16137 of 1997 for placing on record the written statement filed by the privaterespondents before the S.D.M. The same was allowed as the revisionerpetitioner had no objection.

6. I have heard the counsel for both the sides and perused the records. It is not disputed with reference to the very same property, the second petitioner herein filed a suit for permanent injunction against the third respondent and others and has been granted adinterim injunction restraining the defendants in that suit from interfering with his possession. This order was granted on 26.10.1995, but, the contention of the petitioners is that in view of the disputes with regard to the very same land, two persons have been murdered and FIR has been registered with reference to the same on 13.12.1995. The learned counsel for the petitioners contends that the Sub Divisional Magistrate will have jurisdiction to entertain the proceedings under Section 145 Cr.P.C. in support of the order of the Civil Court granting the injunction. He also relied upon the decision in Mohinder Singh v. Dilbag Raj, 1976 PLR 803. According to the petitioners, such

proceedings taken in aid of the maintenance of the order passed for the maintenance of peace should not be terminated; that too, by means a nonspeaking order. The learned counsel for the private respondents, on the other hand, contended that the learned Sub Divisional Magistrate has satisfied himself that there was no need to continue the proceedings under Section 145 Cr.P.C. and has, therefore, dropped the proceedings and, therefore, this Court shall not interfere with the said order where the Magistrate has exercised his discretion one way. The learned counsel for the respondents further contended that if only there was any apprehension of breach of peace, the Magistrate can act under Section 145 Cr.P.C. whereas in this case, the Civil Court has already granted injunction in favour of the petitioners and it is also not shown that after the order passed under Section 146 Cr.P.C., there was any occasion necessitating the continuance of the proceedings. The learned counsel for the private respondents also contended that the respondents can appear before the Magistrate and establish that there was no dispute and therefore, there was no necessity for the continuation of the proceedings, in view of the provisions contained in subsection (5) of Section 145 Cr.P.C. But, in this case, the learned Magistrate has, in his order dated 22.2.1996, impugned in this petition, only stated that the counsel for the parties were heard, records were gone through, the statement of the SHO was recorded, that the statement and the report are contradictory to each other and held that in the circumstances, he did not find any reason to proceed with the Kalendra. He, therefore, ordered the Kalendra to be filed. The learned Magistrate has not stated that after the order passed under Sections 145 and 146 Cr.P.C., there was no dispute in existence and therefore, there was no need to continue the proceedings. The impugned order dated 22.2.1996 is a speaking order though, it has been stated that the statement and the report of the SHO are contradictory to each other and that the Magistrate did not find any ground to continue the proceedings. He had not pointed out as to what is the inconsistency and as to why he did not see it fit to continue the proceedings. Therefore, the learned Magistrate was not right in dropping the proceedings. As pointed out already, the Civil Court had granted injunction in favour of the second petitioner against the third respondent and certain others, but subsequently in view of the disputes between the parties to this petition, murders have taken place and FIR has also been registered on 13.12.1995. On 29.1.1996, the learned Magistrate initiated proceedings under Section 145 Cr.P.C. since he was satisfied that there was a dispute likely to cause a breach of peace. He was also satisfied that the case was of an emergent nature and, therefore, not only ordered the attachment of the land but also appointed the Tehsildar, Abohar as the Receiver. Subsequently he passed this impugned order on 22.2.1996 (sic) by means of a nonspeaking order to which I have referred to above, which cannot be sustained. The fact that Civil Court had granted injunction in the circumstances of the case, will not be a ground to drop the proceedings under Section 145 Cr.P.C. Because in this case, the respondents contend that there should not be proceeding under

Section 145 or under Section 146 Cr.P.C. in view of the order of injunction granted by the Civil Court. On the other hand, the petitioners do not want the proceedings under Section 145 to be dropped in spite of the injunction order granted in favour of the second petitioner since in spite of that order, there have been murders also in view of the dispute. This Court in *Ujjagar Singh v. Sub Divisional Magistrate, Malerkotla*, 1994(1) RCR 393, held as follows :

"On giving a deeper thought I do think that this jurisdiction of a criminal Court be restricted. Cases are not wanting where a party obtains an ad interim order in his favour to the effect that during the pendency of the suit the other party will not interfere in his possession. If the other party uses forged (sic) to dispossess him, in spite of the stay order in his favour, leading to the apprehension of the breach of the peace creating a situation for the launching of the proceedings under Section 145, Criminal Procedure Code, and attraction of its emergency powers under subsection (4), the Magistrate will then step in, not to start parallel proceedings but to defend the orders of the Civil Court not allowing the aggressor to establish himself in possession of the subjectmatter of the dispute in violation of the orders of the Court. In such a situation if the Magistrate acts then he adds the weight of the executive authority to respect the order of Civil Court for maintenance of status quo and does not violate any law."

7. Therefore, the contention of the learned counsel for the respondents that subsequent to the order under Section 146 Cr.P.C., there was no incident justifying the continuation of the proceedings and that the Civil Court had also granted injunction in favour of the petitioners, and therefore also there was no ground for continuance of the proceedings, cannot be accepted. As pointed out already, the proceedings taken by the Magistrate in this case are not parallel to the civil proceedings but are proceedings which add weight of the executive authority to respect the order of the Civil Court granting injunction. Therefore, I am of the view that the impugned order dated 22.2.1996 passed by the learned Sub Divisional Magistrate, Abohar dropping the proceedings cannot be sustained and is accordingly set aside.

8. In the circumstances of the case, the matter is remanded back to the learned Sub Divisional Magistrate, Abohar to consider the matter afresh in the light of observations made herein and for fresh disposal. The learned Magistrate will take into consideration the order of injunction granted by the Civil Court, the subsequent events which had taken place after the order of the Civil Court with regard to the possession of the land in question as also the other relevant circumstances and then decide as to whether there is any necessity to continue the proceedings and whether there is any need to pass an order of attachment. The learned Magistrate will give adequate opportunity to both sides to lead further evidence, both oral and documentary in support of their respective claims. The parties are directed to appear before the Sub Divisional Magistrate, Abohar on April 24, 1998 for taking further direction in this regard. The petition is disposed of accordingly.