
(1991) 10 MP CK 0004

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneous Case No. 1177 of 1988

Jagannath and Others

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 21-10-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4
Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 482

Citation : (1992) CriLJ 1310

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

Bench : Single Bench

Advocate : B. Raj Sharma, for the Appellant; Arun Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—The tenant/applicant No. 1 Jagannath and others, aggrieved of an order passed u/s 146(1), Criminal P. C., of attachment of the subject of the dispute, i.e. a shop, approached the revisional Court. The revisional Court upheld the order of attachment and directed to drop the proceedings u/s 145, Cr. P. C. Aggrieved of this order, the applicants have come u/s 482, Cr. P. C. for quashing of the order dt. 23-9-88 of Sessions Judge Datia passed in Cr. Revision No. 39/88 and order dt. 21-3-1988 passed in Case No. 13/145/88 by SLM, Datia.

2. The relevant facts which are not in much dispute are :

The applicant No. 1 alleges himself to be a tenant since last 30 years of the shop owned by non-applicant No. 2 Benibai, situated at No. 78, Ward No. 16, Richhra-Phatak, Datia, at the rate of Rs. 20/- per month. Benibai, non-applicant No. 2 lodged a report in the Police Kotwali that the applicants are trying to take possession of the shop by force, there is likelihood of breach of peace. On it, police sent the report to SDM on 22-12-1986 for taking action u/s 145, but no order was passed for a long time. The tenant feeling apprehended that he would be dispossessed from the disputed shop, with his sons, instituted a civil suit (C.S.

No. 4-A of 1986) in the Court of Third Civil Judge Class II, Datia, on 27-9-1986 and also applied for grant of temporary injunction under Order 39, Rules 1 and 2, CPC, obtained ex parte temporary injunction restraining non-applicant No. 2 from interfering with the possession of the applicant, which, after considering the stand of the defendant/ owner that there is no relationship of landlord and tenant, and the plaintiff is a trespasser, on document produced found a prima facie case in favour of the plaintiff/ the applicant No. 1, confirmed the order on 3-1-87 protecting the possession of the applicant/ tenant till final decision of the suit. As no order was passed by the SDM on the report of the police dt. 22-12-86, the concerned police sent a letter on 23-12-87 again to SDM, requesting/reminding to take action. On it, SDM passed a preliminary order u/s 145(1) and observing that the dispute is of a serious nature and there is likelihood of happening of any untoward incident in ordered attachment of the shop u/s 146(1) of Cr. P. C., directing the Town Inspector of Police, to give in "supurdgi" to an independent person.

3. Shri B.R. Sharma, counsel for the applicant, placing reliance on two decisions of the apex Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, and Jhummal alias Devandas Vs. State of Madhya Pradesh and Others, contended that in view of the fact that a civil suit was already instituted, in respect of the same subject of dispute, i.e. the shop, there is no justification for initiating a parallel criminal proceeding u/s 145, Cr. P. C.; particularly when the Civil Court after hearing the parties to the dispute, finding a prima facie case in favour of the applicant, passed the order of temporary injunction under Order 39, Rules 1 and 2, restraining the defendant/non-applicant No. 2 not to interfere the possession, there was no occasion to SDM to pass the order of attachment nor there was any such emergency, for exercising of the powers u/s 146(1). Reliance was also placed on a short-noted decision in Harkishanlal v. Subhash Chandra 1991 (2) MPWN 135.

4. Shri Anil Mishra, counsel for non-applicant No. 2, contended that as laid down by the apex Court in Jhunamal's case (supra) mere filing of a civil suit, does not mean that a concluded order u/s 145 made by the Magistrate of competent jurisdiction should be set at naught, as the order made u/s 145 deals only with the factum of possession of the party on a particular day. Hence, it was contended by placing reliance on two short-noted decisions in Pooranchand v. Ratan Devi 1983 MPWN 427 and Raghuvir Singh v. Sambhusingh (1986) 1 MPWN 121 that the jurisdiction of Magistrate u/s 145 and Section 146 is not ousted merely by filing a civil suit and of obtaining an order of status quo and, therefore, in case of emergency the disputed property could be attached as the object of an order u/s 146 is to safe guard the interest of person legally entitled to possession. Case of Onkardas Ranchhod Das v. Keshar Singh 1990 (2) MPWN 46 was also pressed into service.

5. After hearing counsel, and on going through the record, in my opinion, the petition u/s 482, Cr. P. C. deserves to be allowed.

6. In Jhunamal's case, *supra*; it has been ruled by the Supreme Court that the ratio of Ram Sumer's case is that a party should not be permitted to litigate before Criminal Court when the civil suit is pending in respect of the same subject matter. That does not mean that a concluded order u/s 145, Cr. P. C. made by the Magistrate of competent jurisdiction should be set at naught, merely because of the unsuccessful party has approached the Civil Court. An order made u/s 145, Cr. P. C., deals only with the factum of possession on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to the decision of the Civil Court. If the rights are litigated, the Civil Court has jurisdiction to give a finding different from that the Magistrate has reached.

7. The purpose of the provision of Section 145, Cr. P. C. is to prevent a breach of peace at the instance of the parties who should, like law abiding citizens, place their disputes before a Civil Court and not take law into their own hands. Even the final order that is contemplated under the said provision, is intended only as a stop-gap arrangement, till the rights are not properly adjudicated by the Civil Court. See *Lallan Prasad v. Nageshwar Prasad* 1982 MPWN 78.

8. In *Ram Sumer Puri's* case, *supra*, the Supreme Court has observed that when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding u/s 145 of Cr. P. C. would not be justified, particularly when possession is being examined by the Civil Court and the parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute.

9. From the seriatim of the facts stated above, it is clear that the dispute was between a landlord and tenant; the landlord wanted to dispossess the tenant without taking recourse to law, therefore, the owner came with a complaint that the applicant is trying to take possession forcibly, and there is likelihood of breach of the peace, merely on the report of the Town Inspector, for the second time, the SDM without considering the existence of emergency passed the order, debarring the tenant from carrying on his business to earn his livelihood. The fact that on the report sent in the year 1986 no action was taken, itself indicates that the learned SDM was of the view that there was no emergency, but suddenly emergency crept in after the applicant obtained the order of temporary injunction restraining the non-applicant No. 2 from interfering with the possession. Crisis is the factor decisive in such circumstances was not existing for passing an order u/s 146(1), more particularly when the applicant obtained an order protecting his possession in civil suit much prior to the order passed u/s 146(1) of Cr. P. C. As the Civil Court, on application u/I. 39, Rule 1, C.P.C. passed the order after hearing parties, finding *prima facie* case regarding position of possession and, by making specific direction regarding retention to delivery of possession. The order was not that of merely "status quo" therefore, the cases of *Pooranchand Gupta* and *Raghuvir Singh* are distinguishable and have no application to the present

facts of the case.

10. In view of the above discussion it is a clear case, where this Court should exercise the powers u/s 482, Cr. P. C. for undoing the injustice, by quashing of the impugned order of attachment, passed by the learned SDM and confirmed by the revisional Court. Accordingly, the order of attachment is quashed and the SLM is directed to see that the possession, if taken by the "Supurgidar" is restored to the applicant. It is further directed that the parties shall abide by the order of temporary injunction passed by the Civil Court till the decision of the suit.

11. At this stage, Shri Mishra made a prayer that the Civil Court, where the suit is pending, be directed to rehear the matter on the question of grant of temporary injunction. Such a direction cannot be given. The defendant/non-applicant No. 2, if so advised, may apply to the Civil Court, if any circumstance for variation or modification of the order passed under Order 39, Rule 4, C.P.C., is existing.

12. In the result, the petition is allowed. Order of attachment passed u/s 146(1) and the order impugned are set aside.