

(2008) 07 J&K CK 0020
In the Jammu And Kashmir High Court

Jamia Auqaf Committee Kangan

APPELLANT

Vs

SHO P/S Kangan and Others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 561A

Citation : (2008) 3 JKJ 37

Hon'ble Judges : M. Yaqoob Mir, J

Bench : Single Bench

Judgement

M. Yaqoob Mir, J.—Dispute regarding possession of the land measuring 1 kanal and 1 marla covered under Survey No. 427 situated at

main Bazar Kangan gave rise to the initiation of proceedings u/s 145/Cr.P.C at the behest of the SHO Kangan. The Judicial Magistrate Kangan

after hearing both the parties has passed a detailed order on 4.9.2006. By virtue of which Ghulam Mohamad Sheikh (respondent No. 2) has been

held to hold possession of the property. Revision preferred against the said order stand dismissed by 3rd Additional Session Judge Srinagar vide

order dated 26.12.2006.

2. Quashment of the proceedings by invoking jurisdiction u/s 561A Cr.P.C are sought. The maintainability of the petition was strongly objected by

the appearing counsel for the respondents, same stand decided vide order dated 31.12.2007 of this Court, operative part of which reads as under:

The opening words"" Nothing in this Code shall be deemed to limit or affect the inherent power of the High court"" suggest that applicability of

Section 435(3), Cr.P.C is excluded. Therefore, inherent power of the court is saved, same is available, whether it can be exercised, is a different

issue, dependent upon the facts and circumstances of each case, presenting question of abuse of process of law or question of securing interests of

justice. This power no doubt is sparingly exercisable. In the instant case whether such power is exercisable will emerge only when appearing

advocates are heard on merits.

3. Now the question is as to whether there has been abuse of process of law and as to whether for securing interest of justice power is to be exercised.

4. Appearing counsel were heard at length. Record stand meticulously sifted.

5. Land in question admittedly is ""State land"". Ali Sheikh father of the respondent No. 2 claimed to be in possession continuously, had filed a suit

for declaration and injunction in the court of Munsif Ganderbal on 7.5.1973, same stand decreed in his favour vide Judgment dated 30.3.1974,

whereunder in exparte he has been declared to have acquired possessory rights over the land and the defendants i.e. State and others were

restrained from causing any interference. The said Judgment and decree had been challenged by the State before the appellate authority i.e. before

Sub Judge Srinagar, as then was. Appeal stand dismissed vide Judgment dated 13.12.1976. The Judgment and decree stand implemented in the

revenue records, wherein said Ali Sheikh is recorded as possessor.

6. After the death of Ali Sheikh his son Ghulam Mohamad Sheikh (respondent) continued to be in possession but since dispossession was

threatened by various persons which include Manzoor Ahmad Rather (petitioner) prompting the said Ghulam Mohamad Sheikh to file suit for

injunction before the court of District Judge Srinagar, same was assigned to Sub Judge (CJM Srinagar). Learned Sub Judge vide order dated

6.5.2005 directed ""Status quo"" to be maintained, same order was made absolute vide order dated 29.4.2006. Despite the said order of ""Status

quo"" dispossession was again threatened prompting the respondent No. 2 to file one more application for clarification of the order and then vide

order dated 6.5.2006, it has been made clear that the order dated 29.4.2006 means that the (respondent No. 2) is in possession of suit property .

The Status quo connotes that there be Status quo with respect to the possession of respondent No. 2 over the suit property. Operative part of the

order dated 29.4.2006 be read accordingly. What emerges is that Ghulam

Mohamad Sheikh has been held to be in possession.

7. The petitioner herein has filed one more suit, regarding the same subject matter, which came to be assigned to the court of Sub Judge (PT&E).

Application for grant of temporary injunction has been dismissed vide order dated 19.7.2006. Against the said order appeal has been preferred

which is pending before the court of 2nd Additional District Judge Srinagar.

8. It is to be made clear, the suit as was filed by the respondent, was pending before Sub Judge (CJM). The suit as was filed by the petitioner was

assigned to Sub Judge (PT & E), later on, vide order dated 2.7.2005 the suit pending before the Sub Judge CJM was also transferred to the court

of Sub Judge (PT & E).

9. Noticing the dispute, threatening breach of peace and tranquility, SHO Kangan submitted report to the Judicial Magistrate 1st Class Kangan for

initiating proceedings u/s 145 Cr.P.C and Learned Magistrate initiated the proceedings, after taking on record the affidavits has passed a lucid

Judgment, wherein Ghulam Mohamad Sheikh has been held to be in possession on the relevant date. The petitioner in the proceedings had filed

certain joint affidavits which were not accepted as not being in conformity with the pleadings and law. The contention of the appearing counsel for

the petitioner that the Learned Magistrate has relied Photostat copies of the documents which were inadmissible in evidence is of no help to him.

The pendency of Civil Suits, more particularly a clarificatory order dated 6.5.2006 passed by Sub Judge (PT & E) is clear and catagoric to show

Ghulam Mohamad Sheikh in possession. Further more the earlier possession of the petitioner's father confirmed by the Judgment and decree of the

trial court, followed by the appellate court, and sufficient answers. Petitioner (Auqaf Committee) without any basis is claiming to be in possession.

Pendency of the Civil Suits more particularly the suit filed by the Ghulam Mohamad Sheikh, wherein his possession has been qualified picking up

the thread from there the Learned Magistrate during the course of the proceedings has correctly appreciated the law viz-a-viz pendency of the

Civil Suits. Proceedings initiated at the instance of SHO Police Station Kangan have been correctly addressed.

10. The Judgments referred in support of contentions by the appearing counsel for the petitioner reported in Sait Tarajee Khimchand and Others

Vs. Yelamarti Satyam alias Satteyya and Others, : R.V.E. Venkatachala Gounder
Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, ,

are of no help to the petitioner as these Judgments have been delivered in
peculiar facts, proceedings u/s 145/Cr.P.C are to be dealt with

differently. The affidavits as placed on record and the records of two Civil suits
were perused, the question of abuse of process of law as claimed

is imaginary.

11. The limited question open for consideration by this Court is as to whether
there is abuse of process of law or whether intervention is necessary

for securing the ends of justice. In the given stated facts abuse of process of law
is not noticed, interests of justice have been secured by the order

impugned. No ground whatsoever is made out for interference. Hence petition
dismissed. The order impugned shall be implemented. The

observation made shall not affect the disposal of the pending suits on their own
merits. The record of the Civil suits including the appeal as called

for perusal be send back to the concerned Courts. Copy of the order alongwith
the record of the Magistrate be send back to the concerned

Magistrate for follow up.

12. Disposed of alongwith.