
(2002) 01 RAJ CK 0049
In the Rajasthan High Court
Case No : Criminal Rev. No. 744 of 2001

Jassu and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 397, 482

Citation : (2002) 1 WLN 688

Hon'ble Judges : D.N. Joshi, J

Bench : Single Bench

Judgement

D.N. Joshi, J.—Both these petitions arise out of the same order dated 13.11.2001 passed by the Sub-Divisional Magistrate, Jaitaran in case No. 17/2001 Under Sections 145 and 146 Cr.P.C. by which the disputed property was attached and Tehsildar, Raipur was appointed as a Receiver of the property.

2. Heard the learned Counsel for the parties.

3. A preliminary objection was raised on behalf of the non-petitioners Ogaria through his Counsel Mr. Suresh Kumbhat that in view of the judgment of this Court in Sita Ram v. Kashi Ram reported in 1979 CriL.R. (Suppl.) 20 and Orde Industries Limited v. State of Rajasthan and Anr. reported in 1996(2) RCD (Raj.) 297 a revision lies against the impugned order and the proceedings u/s 482 Cr.P.C. are misconceived. It was further argued that the revision filed by Pakuri and Ors. should not be entertained as it has been filed by passing the hierarchy of judicial courts u/s 397 Cr.P.C. This Court as well as the Session Court has jurisdiction to hear and decide a revision and the petitioners Pakuri and Ors. may be directed to file a revision, if advised, before the learned Sessions Judge concerned, as has been done by some of the parties in this case against the same impugned order.

4. It was argued on behalf of the learned Counsel for the petitioners in both the cases that civil suits are pending in respect of the same property, and therefore,

the impugned order is liable to be set aside and proceedings before the learned Sub-Divisional Magistrate are liable to be quashed. The learned counsels have placed reliance on the following judgments in both the cases:

- (1) Amresh Tiwari v. Lalita Prasad Dube AIR 2000 SC 1504
- (2) Ram Sumer Puri Mahant Vs. State of U.P. and Others,
- (3) Hira Lal v. State of Rajasthan and Ors. 1996 Cri. L.R. 456
- (4) Munna and Ors. v. State of Rajasthan and Ors., (S.B. Cri. Misc. Pet. No. 489/2001 dated 20.9.01)
- (5) Jagdish v. State of Rajasthan 1996 Cri.L.R. 707

5. The learned Counsel has argued that no opportunity to produce the evidence was given and there were no grounds for passing the preliminary order and thereby the learned Magistrate had no jurisdiction to pass an order u/s 146(1) Cr.P.C. attaching and appointing a Receiver of the disputed property. There was no material on record for presuming likelihood of breach of peace and of emergency. Therefore, the impugned order be set at naught and the proceedings u/s 145(1) Cr.P.C. pending before the learned S.D.M. Jaitaran be quashed.

6. The learned Counsel also argued that the affidavit filed by the S.H.O. Gopal Singh was not even attested upon on the basis of which the proceedings have been initiated. The learned Counsel has produced the certified copies of the revenue suits for the perusal of the court.

7. The learned Counsel for the non-petitioner placing reliance on the decisions given in Sushil Kumar v. State of Rajasthan reported in 1997 Cr. LR. 94 and Gulam Farid and Ors. v. State of Rajasthan, reported in 1997 Cri. L.R. 222 argued that pendency of civil suit is no bar for initiation of proceedings u/s 145 Cr.P.C. It was argued that in view of the preliminary objection, the petitions are not maintainable before this Court.

8. The decision of this Court in Sita Ram v. Ghasi Ram 1979 Cr.L.R. Supp. 20 was followed in Ram Pratap and Ors. v. State of Rajasthan reported in 1997 Cri .L.R. P. 204 and it has been held that the judgment of this Court in Yakub Ali v. State of Rajasthan reported in 1994(2) RLR 607 was per incuriam in view of the Division Bench judgment on this Court in Sita Ram's case (supra). Therefore petition u/s 482 Cr.P.C. is not maintainable and the revision petition though may be held to be maintainable, the petitioner may be directed first to approach the learned Sessions Judge as some of the effected parties viz. Chandra, Hasturi and Omprakash have filed the civil revision petitions in the Court of Additional Sessions Judge, Sojat camp Jaitaran.

9. The proceedings of the learned Additional Sessions Judge dated 27.11.2001 shows that a revision against the order dated 13.11.2001 has been filed and this Court has stayed the operation of the order dated 13.11.2001 on 23.11.2001.

10. It has been held in Orde Industries's case (supra) as under:

the impugned order were revisable u/s 397 Cr.P.C. either by the Sessions Judge or by this Court. The alleged wrong done by those orders to the petitioner could have thus been remedied through that forum. There is no reason with the petitioner for not choosing that forum for the redressal of its supposed grievances, if any. Thus it is not of the rarest of rare cases to exercise its powers u/s 482 Cr.P.C. by this Court. This petition is liable to be dismissed for that reason. But this application can also be treated as one u/s 397 Cr.P.C. Section 397 Cr.P.C. confers concurrent jurisdiction upon this Court and the Sessions Judge in the matter of examining the legality and validity of an order passed by an inferior court. In view of that position of law this application is treated on one u/s 397 Cr. P.C.

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hierarchy in the procedure has not been followed and no explanation for not challenging the impugned orders before the Session Judge u/s 397 Cr.P.C. has been given. In the interest of proper functioning of the Courts and administration of Judicature the Sessions Judge to discourage the increasing tendency of by passing the jurisdiction, it is necessary that hierarchy of Courts must be followed. Therefore, without expression of any opinion on the merits of the cases either or of the parties, this petition/application u/s 482/397 Cr.P.C. is hereby dismissed.

11. It has been held in Sita Ram's case (supra) and in Ram Pratap's case (supra) that the order of attachment u/s 146(1) Cr.P.C. is final order and not an interlocutory order and open to revision.

12. In the opinion of the Court, without pressing any opinion on the rival contentions of the parties, the petition u/s 482 Cr.P.C. is converted into a revision as one u/s 397 Cr.P.C. and in view of the judgments given in Sita Ram's and Rampratap's case (supra), the impugned order is revisable and petition u/s 482 Cr.P.C. can be maintained only in rarest of rare cases. The petition u/s 482 Cr.P.C. treated as one u/s 397 Cr.P.C. as revision petition filed by Pakuri and Ors. be decided by the learned Additional Sessions Judge, before whom the revision against the impugned order is pending. Therefore, the petitions are disposed of without going into the merits and rival contentions of the parties with the following directions:

(1) The petition u/s 482 Cr.P.C. converted as one u/s 397 Cr.P.C. as revision is directed to send back to the learned Additional Sessions Judge for disposal.

(2) The criminal revision petition of Pakuri and Ors. be also sent to the learned Additional Sessions Judge for disposal in view of the decisions given in Rampratap's case (supra) and Orde Industries Limited's case (supra).

(3) The learned Additional Sessions Judge is directed to dispose both the revision petitions pending before it by a common order.

13. The parties are at liberty to raise any objection before the learned Additional Sessions Judge, Sojat Camp Jaitaran, which were raised before this Court.

14. The stay order granted by this Court on 23.11.2001 will continue till the matter is heard afresh by the learned Additional Sessions Judge in regard to stay application, if any. The learned Additional Sessions Judge will decide the matter without being influenced by the order of this Court dated 23.11.2001. He is also directed to decide the case expeditiously.

15. The parties are directed to appear before the learned Additional Sessions Judge within a period of 15 days from the date of passing of this order.

16. With the above observations and directions, both the petitions are disposed of accordingly.