

(2007) 12 UK CK 0015

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 127 of 2003

Kamai Singh and Another

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

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

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2008) 3 UC 1427

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : Lokendra Dobhal, for the Appellant; Anurag Bisaria, holding brief of H.M. Raturi, for the Respondent

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—By way of this petition u/s 482 Code of Criminal Procedure, the Petitioner has challenged the judgment and order dated 09-10-1998 passed by Sub Divisional Magistrate in Criminal Case No. 10 of 1996, u/s 145 Code of Criminal Procedure as well as judgment and order dated 29-05-2003 passed by Sessions Judge, Uttarkashi in Criminal Revision No. 17 of 1998.

2. Brief facts of the case are that the proceedings u/s 145 Code of Criminal Procedure was initiated by the S.D.M., Uttarkashi and after hearing both the parties and after having perused the entire material available before him, learned S.D.M., Uttarkashi vide order dated 09-10-1898 came to the conclusion that second party Mor Singh and others are not In possession over the land in question. The aforesaid order of the S.D.M. was challenged by the Petitioner in the revision and learned Sessions Judge dismissed the revision vide judgment and order dated 29-05-2003. Feeling aggrieved by the said orders, the Petitioner preferred this petition before this Court.

3. Heard Sri Lokendra Dobhal, learned Counsel for the Petitioners, Sri Anurag Bisaria holding brief of Sri H.M. Raturi, learned Counsel for the Respondent No. 3

and perused the record.

4. It is not disputed between the parties that the Civil Suit No. 11 of 1996, Jaipal Singh and Ors. v. Kamal Singh was filed before the court of competent jurisdiction and in that case on 15-03-1996, the temporary injunction was also granted.

5. Learned Counsel for the Petitioner has submitted that in view of the fact that the civil litigation was pending between the parties, the proceedings of Section 145 Code of Criminal Procedure would not be initiated.

6. Learned Counsel for the Respondent has made a rival contention by submitting that the civil suit which was filed by Respondent No. 2 and 3 was ultimately dismissed. He has further contended that the Petitioner has also filed a suit before the revenue court u/s 229(B) of U.P.Z.A. and L.R. Act that has also been dismissed and now the restoration application is pending.

7. Having considered the rival submission made by learned Counsel for the parties, i am of the view that there is no dispute with regard to this fact that the civil litigation was initiated between the parties, which was ultimately dismissed and now the suit in the revenue court is pending.

8. The Hon''ble Supreme Court in a case Kunjbihari v. Balram and Anr. reported in (2007) 1 SCC (Cri) 376 has been held that:

It is not disputed that the property forming the subject-matter of proceedings u/s 145 of the Code of Criminal Procedure (CrPC) was the subject-matter of civil suit between the parties. The rights of the parties have been adjudicated upon by the civil court. An execution petition filed by the Respondents herein was also dismissed in view of the adjudication of rights by the civil court based on a compromise. Inasmuch as the rights of the parties stand settled by a compromise decree taken on record of the court during the pendency of civil proceedings inter parties, none of the parties is justified in reagitating the same issue. The parties must respect the decree of the court. In spite of the civil proceedings having achieved finality, it appears that proceedings u/s 145 Code of Criminal Procedure were initiated. The Appellant sought the proceedings being dropped in view of the civil court''s decree. As that prayer was not acceded to, the Appellant approached the High Court u/s 482 Code of Criminal Procedure seeking quashing of the proceedings u/s 145 Code of Criminal Procedure. The petition has been rejected by the High Court forming an opinion that in spite of the civil court''s decree, proceedings u/s 145 Code of Criminal Procedure may continue.

Having heard the learned Counsel for the parties, we are satisfied that the proceedings u/s 145 Code of Criminal Procedure are an abuse of the process of the court in the facts of the present case. The rights of the parties have already been adjudicated upon. If any party claims to be in possession of the property and seeks its protection, it is for that party to approach the civil court and get an

appropriate order. The proceedings u/s 145 Code of Criminal Procedure cannot be allowed to be continued in the facts and circumstances of the case.

9. In view of the facts and circumstances of the case as well as the observations made by the Hon''ble Apex Court in the aforesaid case, I am of the view that until civil proceedings have achieved finality, the proceedings u/s 145 Code of Criminal Procedure initiated will be certainly an abuse of process of court. As the matter is still sub-judice before the revenue court, therefore, if any party claims to be in possession of the property then it is for that party to approach the civil court and get the appropriate order but in any way the proceedings u/s 145 Code of Criminal Procedure cannot be allowed to be continued in the facts and circumstances of the present case.

10. For the reasons stated above, I allow this petition and quash the order dated 09-10-1998 passed by Sub-Divisional Magistrate in Criminal Case No. 10 of 1996, u/s 145 Code of Criminal Procedure as well as judgment and order dated 29-05-2003 passed by Sessions Judge, Uttarkashi in Criminal Revision No. 17 of 1998.