
(1989) 09 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 8577-M of 1988

Karnail Singh

APPELLANT

Vs

Sub Divisional Magistrate and ors.

RESPONDENT

Date of Decision : 01-09-1989

Acts Referred:

Citation : (1989) 2 AICLR 611 : (1990) 1 RCR(Criminal) 233

Hon'ble Judges : S.S.Grewal, J

Advocate : I.S. Sidhu, Sarwan Singh, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under section 482 of the Criminal Procedure Code (hereinafter referred to as the Code relates to quashment of complaint dated 23.5.1987 under section 145 of the Code and all subsequent proceedings including the order dated 8.6.1988 passed under section 145(1) of the Code, copy whereof is Annexure P6, order dated 17.8.1988 Annexure P7, whereby the property in dispute was ordered to be attached under section 146(1) of the Code and Circle Revenue Officer (Naib Tehsildar) Nathana, district Bathinda was appointed as Receiver, as well as subsequent order dated 28th of November, 1988, refusing to terminate the proceedings under section 145 of the Code.

2. In brief, facts relevant for the disposal of the petition, are that land measuring 228 Kanals 02 Marlas, situated in village Gobindpura, tehsil and district Bathinda and detailed in para No. 1 of the petition is owned by Jumla Malkan and was reserved as such in the consolidation proceedings. Out of the said land measuring 36 Kanals 4 Marlas, as detailed in para No. 2 of the petition, is in possession of Karnail Singh, petitioner, since 198586 as tenant at will on payment of yearly rent of Rs. 1,950/ for the last several years. His possession as tenant at will is recorded in the jamabandi for the year 199586, as well as in subsequent Khasra girdawari entries up to the year 198789. It is farther averred that the civil suit filed by respondent Nos. 6 to 9 against Karam Singh, Darbara Singh & Gram Panchayat for restraining them from interfering in their possession

of land measuring 122 Kanals 9 Marlas, as lessees of Local Committee was dismissed as withdrawn on 2nd of Aug. 1988. After withdrawal of the said suit, respondents No 3 to 5 & 7 to 9 moved application u/s. 145 of the Code in respect of the land in possession of the petitioner as well as other land belonging to Jumla Malkan in the village. In those proceedings, the Sub Divisional Magistrate Bathinda, passed impugned orders under section 145(1) of the Code (Annexure P6) and the order passed u/s. 146 of the Code concerning attachment of the property in dispute and appointed Circle Revenue Officer cum Naib Tehsildar, Nathana to receive vide order dated (copy whereof is Annexure P7). Thereafter, the petitioner along with others claiming themselves to be the lessees under the Gram Panchayat filed civil suit for restraining the present respondents from taking possession of the land in dispute, and the Sub Judge 1st Class, Bathinda, vide, his order dated 27.8.1988 Annexure P8 directed that the possession be not taken illegally or forcibly otherwise than in due course of law. The petitioner was permitted to be impleaded as party in proceedings under section 145 of the Code but the Sub Divisional Magistrate refused to terminate the proceedings under section 145 of the Code vide impugned order dated 28.11.1988 Annexure P9.

3. The respondents in their written reply besides raising preliminary objections concerning maintainability of this petition raised objection that Hon'ble Mr. Justice S.D. Bajaj vide order dated 14.10.1988 dismissed Criminal Misc. No. 5910M of 1988 filed by Gram Panchayat in respect of proceedings under sections 145 and 146 of the Code pending before the Sub Divisional Magistrate. On merits it was admitted that the land was owned and possessed by Jumla Malkan and Gram Panchayat has no right, title or interest therein. The land in dispute was managed by Local Committee of Khewatdara, or right holders, who used to auction the land and would spend the income from that land for common purpose, and benefit of the right holders. The land in dispute was auctioned on 21.11.1988 in favour of respondents No. 4 and 6 to 9 for a period of one year and since then the said respondents are in actual physical possession of the land in dispute as allottees. The averments regarding civil and criminal litigation referred to above were admitted. It was, however, pleaded that the Sub Divisional Magistrate had rightly passed impugned orders under sections 145 and 146 of the Code and the present petition was liable to be dismissed.

4. Counsel for the parties were heard. On behalf of the petitioner it was submitted that the petitioner is in possession of the land measuring 36 Kanals 4 Marlas for the last several years which fact finds support from the copy of the jamabandi for the year 1985-86 and subsequent Khasra girdawari entries upto 1987-88 and no proceedings under section 145 of the Code could be initiated, by the Sub Divisional Magistrate against the petitioner at the instance of the respondents. Consequently it was submitted that since the Civil Court has already granted stay in favour of the petitioner proceedings under section 145 of the Code, are without jurisdiction and cannot, be permitted to continue.

5. As far as, the question of jurisdiction of the Magistrate to act under section

145 of the Code is concerned, the same does not come to an end simply because civil suit regarding the same subject matter had been dismissed as Withdrawn earlier or because such a suit was filed after a few days of the initiation of the proceedings under section 145(1) of the Code, or that vide impugned order dated 27.8.1988 Annexure P8, interim stay was granted, directing the defendants including the Gram Panchayat and Assistant Collector First Grade cum Naib Tehsildar (who had been appointed Receiver) not to take possession illegally or forcibly otherwise than in due course of law I find support in my view from the authority in case Jaunamal alias Devandas v. State of Madhya Pradesh and others, AIR 1988 Supreme Court 197, wherein the quashing by the High Court of order passed under section 145(6) of the Code merely on ground that the unsuccessful party had filed civil suit was held improper. I am also fortified in my view by a Division Bench authority of this Court in Mohinder Singh v. Shri Dilbagh Rai, 1976 Punjab Law Reporter 803, wherein it was held that the Magistrate had jurisdiction to continue proceedings under section 145 of the Code, irrespective of the pendency of the cases between the same parties about the same subject matter and in spite of the ad interim orders passed. I am further supported in my view by the authority in Mathuralal v. Bhanwarlal and another, AIR 1980 Supreme Court 242, wherein it was held that the Magistrate's jurisdiction does not come to an end as soon as an attachment is made on the ground of emergency.

6. Another important aspect of the case is that Criminal Misc. No. 5910M of 1988, regarding the same subject matter in proceedings pending before the SubDivisional Magistrate filed by Gram Panchayat of Gobindpura and others against SubDivisional Magistrate, Bathinda and others which includes respondents No. 1 to 9 in the present petition was dismissed on merits by S. D. Bajaj, j., on 14101988. This matter cannot be permitted to be reopened now merely because the present petitioner was not impleaded as a party in the aforesaid petition decided by S. D. Bajaj, J., on 14101988. It is settled law that while dealing with proceedings under section 145 of the Code, only the actual physical possession of the party on the relevant date is required to be determined and normally the Magistrate in such proceedings is not required to go into the question of title.

7. For the foregoing reasons, this petition is without any merit and is dismissed. The learned SubDivisional Magistrate shall, however, proceed to determine as to which party was in actual physical possession at the relevant time and dispose of proceedings under sections 145 and 146 of the Code pending in his Court expeditiously; preferably within two months A copy of this order be sent to the SubDivisional Magistrate, Bathinda, for strict compliance.