
(2002) 07 OHC CK 0076

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 5291 of 2001

Kartika Sahoo and Others

APPELLANT

Vs

Krushna Chandra Sahoo and Another

RESPONDENT

Date of Decision : 25-07-2002

Acts Referred:

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

Citation : (2002) 94 CLT 677 : (2002) OLR 732 Supp

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard further argument. This application u/s 482, Cr.P.C. is disposed of in the following manner.

2. The Second Party members in Criminal Misc. Case No. 169 of 2001 of the Court of Executive Magistrate, Jagatsinghpur, have challenged the order dated 19.6.2001 of that Court on the ground of illegality and impropriety in that order. The first party members in that proceeding are the opposite party members 1 and 2 in this case. It appears from the impugned order that learned Executive Magistrate has passed order for attachment u/s 146, Cr.P.C. and has appointed the local R.I. as the receiver for the subject matter of dispute. It is not disputed at the Bar that Title Suit No. 26 of 2001 has been filed by the first party members, inter alia, claiming for the relief of injunction and in that suit, application under Order 39, Rules 1 and 2, CPC was dismissed by the trial Court after granting order of interim injunction and thereafter in Misc. Appeal No. 56 of 2001 the learned Addl. District Judge, Jagatsinghpur allowed the appeal by directing the parties to maintain status quo with respect to the subject matter of dispute.

3. In view of that admitted position on record, the second party members challenge the order of attachment u/s 146, Cr.P.C. In support of their rival

contentions relating to maintainability of an order u/s 146, Cr.P.C. in a given situation, as noted above, both the parties have referred to the following decisions. *Ram Sumer Purl Mahant v. State of U.P. and Ors.*, AIR 1985 Supreme Court 472; *Surendra Pal Singh Vs. Board of Revenue for Rajasthan and others*, ; *Dharampal and others Vs. Smt. Ramshri and others*, *Amresh Tiwari v. Lalta Prasad Dubey and Anr.*, 2000 (II) OLR (SC) 59 *Ranbir Singh v. Dalbir Singh and Ors.* 2002 C.L.J. 2017 *Charan Naik and Ors. v. Kirtan Mohanty*, 87 (1999) CLT 425 and *Nabaghan Mohanty and two Ors. v. Dwarikanath Tripathy and Anr.* 89 (2000) CLT 809

4. Referring to the above noted decisions and interpreting the same in accordance with their respective cases, both the parties advance argument, In that respect when the second party/petitioners argue that in view of existence of an order of status quo as per the decision of the Civil Court, the order of attachment by the Executive Magistrate is no more enforceable and maintainable and accordingly he distinguishes the case in which the Apex Court and this Court has stated about maintainability of a proceeding u/s 145, Cr.P.C. notwithstanding pendency of civil dispute. On the other hand, learned counsel for the first party/opposite parties advances the contention that notwithstanding pendency of a civil proceeding the impugned order of attachment is maintainable inasmuch as there has been no order of appointment of receiver and the order in the above noted Misc. Appeal is only for maintaining status quo.

5. All the above noted decisions from the Apex Court were duly referred to and discussed in the case of *Charan Naik* (supra). It emerges from the ratio propounded by the Apex Court and this Court that, where the Civil Court is in seisin of the dispute relating to claim of possession and has passed some order making any interim arrangement, then the proceeding u/s 145, Cr.P.C. and the arrangement by the Executive Magistrate must give way and oblige to the order of the Civil Court. There is no exception to the above ratio by expressing any contrary view in any of the cited cases (supra).

6. From the contention advanced by the first party/opposite parties, this Court feels that the first party has not understood the meaning of the term "status quo" which has been ordered to be maintained by the parties as per the order passed by the Appellate Court in Misc. Appeal No. 56 of 2001. The term "status quo" is not a meaningless term as has been argued by the first party/ opposite party. That term means the prevailing or existing state of things on the given date. When the Court directed the parties to maintain "status quo", that means parties to the proceeding are bound to maintain the condition of the disputed property without fighting for possession. In this case the allegation is of construction of a house by the second party on a vacant portion of the disputed property. Once the order of status quo is passed, neither party can proceed with any such construction on the claim of possession on the date of order of status quo, but they are to maintain that condition of the land. That is the only meaning which can be derived from the term "status quo" with reference to the present

dispute between the parties. Once such an order has been passed by the Civil Court, neither party can tamper with the property in any manner, and violation of the direction of injunction shall be squarely covered by the provision under Order 39, Rule 2(A), CPC and the aggrieved party can approach the appropriate forum. In view of that, there cannot be any apprehension of breach of peace between the parties relating to possession after the order of status quo has been passed by the Civil Court. A proceeding u/s 145, Cr.P.C. can only be initiated or maintained when there exists apprehension of breach of peace between the parties on a dispute for land or water or the boundary thereof. A mere dispute for land or water without apprehension of breach of peace does not give jurisdiction to the Magistrate to initiate proceeding u/s 145, Cr.P.C. to adjudicate the claim of possession.

7. On analysis of the facts and circumstance, this Court is of the view that because of the order of status quo there cannot be reasonable apprehension of breach of peace between the parties concerning possession. In view of that, the order of attachment passed by the Magistrate is illegal and not sustainable and accordingly vacated, so also the proceeding u/s 145, Cr.P.C. is dropped.

The Criminal Misc. Case is accordingly allowed.