

(2017) 02 MP CK 0207
In the Madhya Pradesh High Court
Case No : 4131 of 2016

KHUMAN SINGH RAJPUT

APPELLANT

Vs

SUPERINTENDENT OF POLICE, DATIA & ANR

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

[Constitution of India](#), [Article 227](#) -
Power of superintendence over all courts by the High Court
[Code of Civil Procedure, 1908](#), [Order 39 Rule 1](#)
[Order 39 Rule 1](#)

Citation : (2017) 02 MP CK 0207

Hon'ble Judges : G S Ahluwalia

Bench : Single Bench

Advocate : S K Shrivastava, M P S Raghuvanshi

Final Decision : Allowed

Judgement

1. This application under Section 482 of CrPC has been filed against the order dated 30.03.2016 passed by Additional Sessions Judge (Special Judge) Shivpuri in Criminal Revision No.94/2014 by which the order dated 23.6.2014 passed by SDM, Shivpuri in Case No.12/12/145 CrPC has been affirmed.

2. The necessary facts for the disposal of this present application in short are that on 28.3.2013, the SHO, P.S. Kotwali, District Shivpuri filed a complaint under Section 145 of CrPC showing the applicant as party No.1 and the respondent as party No.2 on the ground that there is a dispute between the parties in respect of land bearing survey No.54, 55, 56 & 57 as well as the house situated on the said land and, therefore, there is a possibility of breach of peace. Notices were issued and both the parties filed their reply. The applicant claimed that the land in dispute is in his possession and he is the owner of the same whereas the respondent submitted that he was in possession of the property in dispute and in his absence, by breaking open lock of the house, the applicant and others have illegally taken possession of the property on 20.3.2012. After

recording the evidence, the SDM by order dated 23.6.2014 directed that the applicant has forcibly and illegally taken possession of the land as well as of the house situated on the said land within a period of two months and the TI Police Station Shivpuri was directed that the possession of the property be delivered to the respondent and the applicant was directed not to interfere with the peaceful possession of the property in dispute.

3. Being aggrieved by the order of the SDM, Shivpuri, the applicant filed a criminal revision which too has suffered dismissal by order dated 30.3.2016. Hence, the present application under Section 482 of CrPC has been filed.

4. It is submitted by the counsel for the applicant that the father of the applicant namely Shri Himanshu Sharma and the respondent are the sons of late Shri Gautam Sharma. The applicant had got the property in dispute in family partition whereas the respondent claims to be the owner and in possession of the property in dispute on the basis of a "will". It was submitted that in fact the respondent has prepared a forged "will" and therefore no right or title flows from the said document. It was further submitted by the counsel for the applicant that he has filed a civil suit against the respondent for declaration of title and permanent injunction on the ground that the applicant had got the property in family settlement. It was further submitted that the respondent had created a forged "will" in order to grab the property and on the strength of the said "will" a false case under Section 145 of CrPC was filed before the SDM Shivpuri and the SDM Shivpuri has passed an order against which a criminal revision is pending before the Sessions Court. An application under Order 39 Rule 1 & 2 of CPC was also filed.

5. Per contra, it is submitted by the counsel for the respondent that in fact he had got the property by virtue of a "will" from his father and he is in possession and title holder of the said property and the application filed under Order 39 rule 1 & 2 of CPC by the applicant has already been rejected by the Trial Court by order dated 11.7.2016 and against which a Misc. Appeal under Order 41 Rule 1 (r) of CPC was filed that too has been dismissed.

6. In reply to this submission made by the counsel for the respondent, it was submitted by the counsel for the applicant that in fact the Trial Court had rejected the application on the ground of the order passed by the SDM Shivpuri and therefore the order passed by the Trial Court cannot be said to be in accordance with law as the findings given by the SDM Shivpuri were not binding and the Trial Court should have applied its independent mind.

7. It is further submitted by the counsel for the applicant that against the dismissal of his Misc Appeal by the Court of II Additional District Judge, Shivpuri, the applicant has already filed a writ petition before this Court under Article 227 of Constitution of India and this Court had already passed an interim order directing the parties to maintain the status quo. The order dated 04.10.2016 passed in W.P.No.6760/2016 has also been placed on record.

8. Heard the learned counsel for the parties.

9. From the documents which have been placed on record along with the application filed under Section 482 of CrPC as well as along with the application for vacating stay, it is clear that none of the parties are stranger to each other. Both of them are claiming to be in possession of the property in dispute. The applicant is claiming to be in possession as well as the title holder on the basis of family settlement whereas the respondent is claiming to be in possession and title holder on the basis of a "will". Both the parties represent the family tree of Shri Gautam Sharma.

10. Whether the family settlement had taken place or whether the "will" is a forged document, is a question which is pending adjudication before the Trial Court.

11. It is also not in dispute that this Court while entertaining a writ petition under Article 227 of Constitution of India has already passed an interim order directing the parties to maintain status quo.

12. The Supreme Court in the case of Ram Sumer Puri Mahant v. State of U.P. & Ors., reported in AIR 1985 SC 472 has held as under:- "2. Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under Section 145, CrPC (Code for short), and attachment of the property at the instance of respondents 2- 5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No. 87/75 filed in the Court of the Civil Judge at Ballia wherein the question of title was gone into and by judgment dated February 28, 1981, the said suit was dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents 2- 5 were the plaintiffs and we gather from the counter affidavit filed in this Court that an appeal has been carried from the decree of the Civil Judge and the same is still pending disposal before the appellate court. The assertion made in the Petition for Special Leave to the effect that respondents 2 to 5 are close relations has not been seriously challenged in the counter affidavit. When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceeding should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during dependency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless

litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession."

13. In the case of Amresh Tiwari vs. Lalta Prasad Dubey and Ano. reported in AIR 2000 SC 1504, the Supreme Court has held as under:- "14. Reliance has been placed on the case of Jhummal alias Devandas versus State of Madhya Pradesh & Ors., reported in 1988 (4) SCC 452 : (AIR 1988 SC 1973 : 1989 Cri LJ 82). It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded Order under Section 145 Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An Order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumers case (AIR 1985 SC 47 : 1985 Cri LJ 752) (supra) fully applies. We clarify that we are not stating that in every case where a civil suit is filed. Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate."

14. The Supreme Court in the case of Mahar Jahan and Ors. v. State of Delhi & Ors. reported in (2004) 13 SCC 421 has held as under:- "4. It is not disputed by the learned counsel for the parties that this very property which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 CrPC may terminate, the order of the criminal court would always be

subject to decision by the civil court. Inasmuch as the parties are already before the civil court, we deem it proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit.

5. We direct the criminal proceedings initiated under Section 145 CrPC to be quashed. The parties are allowed liberty of approaching the civil court. As we have already noted that Civil Suit No.404 of 2003 pending in the Court of Senior Civil Judge, Delhi, is a suit only for issuance of permanent injunction. We allow the parties liberty of filing any application for interim relief therein."

15. In this case also the family of two brothers are fighting for property which has been left by their father Shri Gautam Sharma.

16. It is also not in dispute that the application under Order 39 Rule 1 & 2 of CPC was rejected by the Trial Court taking into consideration the order passed by the SDM. The counsel for the applicant was right in submitting that the order of the criminal court under Section 145 of CrPC is always subject to decision by the Civil Court. It is also not in dispute that this Court while entertaining a petition under Article 227 of Constitution of India has already passed an interim order directing the parties to maintain status quo.

17. Under these circumstances, when the parties are before the Civil Court and an interim order has already been passed by this Court while exercising powers under Article 227 of Constitution of India, this Court is of the considered opinion that no useful purpose would be served by keeping the proceedings under Section 145 of CrPC pending as an interim order has already been passed in the civil proceedings therefore, the order passed under Section 145 of CrPC will always be subject to the outcome of the civil proceedings. Hence, the proceedings initiated under Section 145 of CrPC are hereby quashed. The order passed by the SDM, Shivpuri on 23.6.2014 in Case No.12/12/145 CrPC as well as the order passed by II Additional Sessions Judge (Special Judge) in Criminal Revision No.94/2014 are hereby quashed.

18. Consequently, this petition succeeds and is hereby allowed.