
(1987) 10 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Amended Criminal Miscellaneous No. 7349 of 1986

Kuldip Singh Sahni

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 05-10-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1988) 1 RCR(Criminal) 525 : (1988) 1 RCR(Criminal) 74

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : K.S. Keer, for the Appellant; R.S. Cheema for Respondent Nos. 3 to 6 and Mr. Sanjay Vij for State, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—In this petition u/s 482, Code of Criminal Procedure, the Petitioner seeks the quashing of the proceedings launched by the Sub-Divisional Magistrate, Patiala, with the passing of an order u/s 145(1) of the said Code, directing the parties to attend his Court and put forward their respective claims with respect to the actual possession of H. No 5746 47/1. He urges that prior to the passing of this order dated 23rd December, 1986, he had already filed a suit (Annexure P4) against the Respondents with the prayer that they should be restrained from interfering in his possession over the suit property, and in view of that these proceedings cannot continue. This suit had been filed on 6th October, 1986 On the same day, he obtained an order of temporary injunction by way of interim measure restraining the other side not to disturb the possession of the Plaintiff on the suit property. On putting in appearance and a contest having been raised by the Respondents, this order of temporary injunction was concededly modified into that of "status quo" with regard to possession. This order was passed on 3rd January. 1987. A veiled challenge has also been made to the impugned order (annexure P8) on the ground that while passing the same, the learned Sub-Divisional Magistrate did not apply his mind inasmuch as he did not

record any reasons for his satisfaction that a dispute did exist between the parties with regard to the physical possession of the house referred to above. Having heard the learned Counsel for the Petitioner at some length I find no merit in this petition.

2. In support of the primary challenge that during the pendency of civil proceedings between the parties no Magistrate should initiate proceedings u/s 145, Cr. P. C, the learned Counsel for the Petitioner besides relying upon certain observations of their Lordships of the Supreme Court in *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, , also relies on some Single Bench judgments of this Court which, to my mind, run counter to a binding precedent laid down by this Court in *Mohinder Singh v. Dilbaqh Rai* (1976) 78 P. L. R. 803. In this judgment, while exhaustively considering the effect or pendency of civil proceedings between the parties and the interim orders passed therein prior to the initiation of proceedings u/s 145, Cr. P. C, this Court ruled as follows:-

The third type of cases, that is, maintenance of status quo during the pendency of the civil suit is a situation in which a civil court does not prima facie feel satisfied about any party being in possession of the subject-matter of the suit. In such cases when both parties claim possession, dangerous situation can develop with the anxiety of both or any one of them to get into actual possession. If the Situation deteriorates then the police or the Magistrate cannot act as silent spectators to witness the breach of the peace. If they act in such circumstances and the Magistrate attaches the subject-matter of the dispute u/s 145, Code of Criminal Procedure then he would be acting to defend the maintenance of the status quo as ordered.

3. So far as *Ram Sumer Puri's* case (supra) is concerned, that was a case where the proceedings u/s 145, Cr. P. C, had been launched after the question of possession with regard to the disputed property had been adjudicated upon by the Civil Court though an appeal against the decree of the trial court was pending at the time of the initiation of those proceedings. It was in the light of that finding of the Civil Court that their Lordships observed that there was hardly any justification "for initiating a parallel proceeding u/s 145 of the Code". The factual position in the instant case is materially different Not only that the Civil Court has not as yet passed any final order determining the rights of the parties vis a vis the property in dispute, there is no interim order even which has any semblance of determination of any rights in favour of a particular party. As already pointed out above, the interim order passed by the Civil Court is that of status quo This order itself clearly indicates that even the Civil Court was in doubt as to the factum of possession of any party on the suit property. So, in the light of the binding judgment in *Mohinder Singh's* case (supra), I find the stand of the learned Counsel for the Petitioner as wholly untenable.

4. His second challenge to the impugned order, as referred to above, is equally meritless. From a perusal of the same I find that the learned Magistrate not only adverted to the contents of the report submitted by the police with regard to the

dispute in question, but even recorded the statement of the investigator, i e. Sub Inspector Hazura Singh before holding that he was satisfied that such a dispute did exist and it was necessary for the Court to intervene by initiating proceedings u/s 145, Cr. P.C. I, therefore, find no infirmity in this order.

5. For the reasons recorded above, I dismiss this petition as totally meritless.