
(1988) 06 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2939-M of 1988 & 3697 of 1988

Latif Ahmed

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 03-06-1988

Acts Referred:

Citation : (1988) 2 RCR(Criminal) 165

Hon'ble Judges : A.P.Chowdhri, J

Advocate : Sh. S.K. Goyal, Sh. S.S. Rathore, Advocates for appearing Parties

Judgement

A.P. Chowdhri, J.

1. In this petition under section 482 of the Code of Criminal Procedure (for short 'the Code') Latif Ahmed (hereinafter referred to as the petitioner) seeks quashing of proceedings under sections 145 and 146 of the Code resulting in two separate orders dated 641988 (annexures P2 and P3) passed by learned SubDivisional Magistrate Jagadhri.

2. Facts necessary for the disposal of this petition are that there is a Masjid Patti Nayamatpur at village Talakaur, District Ambala owning inter alia some agricultural land. Noordin uncle of the petitioner was Mohitmim of the Masjid. It is averred that Noordin was competent to execute a Will with respect to the appointment of Mohitmim and in exercise of the said power he executed a Will dated A 121981 in favour of the petitioner to the effect that after his death the petitioner will be Mohitmim of the Masjid and its property. During his life time Noordin was cultivating the land belonging to Masjid and Khasra Girdavri was in his name. Certain persons tried to interfere in the possession of Noordin alleging that all the Mohammedan residents of the village collectively had a right to manage the Masjid and its property. Noordin filed a civil suit in July, 1985 against those persons. The suit was entertained by learned District Judge, Ambala, on account of summer vacations. The learned District Judge passed an order dated 2961985 (Annexure P1) in that suit. It was an adinterim injunction restraining the defendantrespondents from interfering in the possession of Noordin. The Suit

was entrusted to Subordinate Judge. Ist Class, Jagadhri, for disposal according to law. Noordin died on 31.7.1987. The petitioner (Latif Ahmed) made an application for being brought on record as legal representative of Noordin, deceased, which is pending in the court of Additional Senior Subordinate Judge, Jagadhri. After the death of Noordin, the Mohammedan residents of the village constituted a Committee for managing the Masjid and its property appointing Bashir Ahmed, respondent No. 2 as its president. Bashir Ahmed filed a suit for permanent injunction against the petitioner and another restraining them from interfering in his possession over the land in dispute. The learned trial Court granted a temporary injunction in his favour on 9.12.1987. The petitioner filed an appeal against this order, which was admitted to a regular hearing by the learned Additional District Judge, Ambala. who stayed the operation of order granting temporary injunction. That appeal is still pending in the Court of learned Additional District Judge, Ambala. It is further averred that Bashir Ahmed, respondent No 2 got prepared a report from the local police for initiating proceedings under section 145 of the Code with regard to possession over the land belonging to the Masjid. In the report, the Station House Officer. Police Station Chhappar stated that the Masjid owned 81/2 killas of land Noordin was its Mohitmim and girdawri of land was entered in his name and he used to cultivate the land. Noordin executed a Will in favour of Latif Ahmed. After the death of Noordin, respondent No. 2 Bashir Ahmed claimed that he had been appointed President of the Managing Committee by the Mohammedan brotherhood on 15.7.1987 and he wanted to take possession of the land belonging to and in possession of the Masjid. In another parcel of land,, measuring 51/2 killas, the said Bashir Ahmed had sugarcane crop which was standing and had ploughed part of land with the intention of taking possession thereof. Case F.I.R. R. No. 103 of 1987, under section 379, Indian Penal Code, P.S. Chhappar, was registered in this connection. It was farther reported that wheat crop was standing in 81/2 killas of land which was to ripen soon, Bashir Ahmed obtained a stay order in his favour on 9.12.1987 from the civil court. Latif Ahmed petitioner filed an appeal in the Court of learned District Judge against the stay order and both the parties i.e. Latif Ahmed petitioner on one hand and Bashir Ahmed on the other had staked their claims regarding possession of the said 81/2 killas of land. Both the parties were making efforts to secure forcible possession of the land. While Bashir Ahmed wanted to take possession of and cut the crop on the ground that he had been appointed Mohitmim by the Mohammedan community, Latif Ahmed petitioner was bent upon taking possession of the land and cut the crop on the ground that there was a Will made by Noordin in his favour. He prayed that after summoning both the parties they may be restrained from cutting the crop and a Receiver may be appointed with respect to the wheat crop to avoid the same from being damaged. He added that he was separately initiating proceedings under sections 107/151 of the Code against both the parties to prevent breach of peace.

3. On 6.4.1988, the learned SubDivisional Magistrate, Jagadhri, passed an order

on the report of the police to the effect that he was satisfied from the police report that a dispute existed between the parties with regard to possession of the land which was likely to cause breach of peace. He called upon both the parties to put in their written claims regarding actual possession on or before 14.4.1988. He further observed that he was satisfied from the police report that the crop was to ripen shortly and, therefore, he considered the case to be one of emergency and accordingly ordered attachment of the crop and placing the same under the control of Tehsildar, Jagadhri. He passed a separate order when copy of order of Shri V.P. Bishnoi. Addl. Senior Subordinate Judge was produced before him. In the second order he maintained that land shall remain under attachment till rights of the parties were decided by the Civil Court.

4. Against the above order, Latif Ahmed petitioner filed a revision petition, which was dismissed by learned Additional Sessions Judge, Ambala, by his order dated 5.5.1988 with a finding that no revision was competent. Through this petition Latif Ahmed petitioner has prayed for quashing the orders passed by learned SubDivisional Magistrate.

5. Bashir Ahmed, respondent No. 2 filed a reply to the petition, in which he denied that Latif Ahmed petitioner was in possession of the land in dispute or that he had sown the wheat crop. He stated that the land in dispute belonged to and was in possession of the Masjid which was being managed according to law by him (Bashir Ahmed) who was duly appointed Manager and President of the said Masjid. He claimed that he had sown the wheat crop and was in actual physical possession of the land. He further stated that pendency of the litigation in the civil court did not bar the initiation of the proceedings under Sections 145/146 of the Code.

Section 482 of the Code reads as under :

"482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

In order to succeed in this case the petitioner has to show either that quashing of the proceedings is necessary to prevent abuse of the process of the Court or that it was necessary to secure the ends of justice. The validity of the order passed by learned Sub Divisional Magistrate under sections 145 and 146 of the Code was assailed on the ground :

(i) that it was a composite order under both the aforesaid provisions and was thus invalid; and

(ii) that the order did not disclose basis for the satisfaction of the learned SubDivisional Magistrate that there was apprehension of breach of peace.

6. There is no merit in either of these grounds. In Nachhattar Singh & Ors v.

Gurinder Singh & Ors., 1983(1) Recent Criminal Reports 493 : 1983(1) C.L.R. 619 , a Division Bench of this Court laid down that a composite order passed under Sections 145 and 146 of the Code was not rendered invalid simply on the ground of being a composite order. In view of the law laid down in Nachhattar Singh's case (supra), decision in M/s Indian Sulp. Acid Industries v. Gurjit Singh Partner Guru Nanak Construction Co. Amritsar, 1982(2) P.L.R. 143 rendered by a Single Bench no longer holds the field.

7. Section 145 of the Code itself lays down that the Executive Magistrate can be satisfied from a report of the police officer that a dispute likely to cause a breach of peace existed concerning any land. Reference in necessary detail has been made to the report of the police and the order recorded by the learned Sub Divisional Magistrate, "Jagadhri, indicating his satisfaction on the basis of the said report.

8. It was next contended that the civil court had granted injunction in favour of the petitioner Latif Ahmed against the respondent Bashir Ahmed and there was thus no occasion for the learned SubDivisional Magistrate to have commenced proceedings under sections 145/146 of the Code. There is no merit in this contention aswell. The suit filed by Noordin (Annexure P1) was in fact a suit filed by the Masjid through its Mohitmim cum, Manager Noordin as distinguished from Latif Ahmed petitioner, who claims to be nephew of Noordin. It may also be pointedout that the suit was filed against 9 persons other than Bashir Ahmed in their individual capacity. Annexure P 1 is copy of the order granting adinterim injunction in favour, of the complainant as distinguished from a temporary injunction which is passed after hearing the parties in an application under JUDGMENT 39, rules I and 2, Civil Procedure Code. Admittedly, the application "of Latif Ahmed", petitioner, to be brought on record as legal representative of Noordin is still pending. It is also not disputed that whereas khasra girdawri entry was in favour of Noordin, there was no khasra girdawri entry in favour of Latif Ahmed petitioner.

9. After his appointment as Manager cumPresident Bashir Ahmed instituted a suit claiming himself to be in possession of the land in dispute. The suit was for declaration that the land in dispute belonged to and was in possession of the Masjid and for permanent injunction restraining among others Latif Ahmed from interfering in his possession. He obtained a temporary injunction in his favour and an appeal there. against is pending in the Court of Additional District Judge, Ambala. The above facts show that so far both the parties are claiming to be in actual physical possession of the land and let alone deciding the dispute as to which of the parties was in actual physical possession of the land, the civil court had not even recorded a finding in favour of one party or the other regarding prima facie possession of the land in dispute. In other words, the dispute regarding possession is pending in the civil court in which both the parties claim to be in actual physical possession. It is not disputed that ultimately, the finding recorded by the civil court will prevail and this is duly reflected in the second

order passed by the learned SubDivisional Magistrate in connection with these proceedings.

10. It will thus be seen that so far the civil court has not recorded any finding in favour of one party or the other regarding actual possession. Both the parties have claimed to be in actual possession as far as civil suits are concerned. Both the parties have staked their claim regarding actual possession resulting in the initiation of proceedings under sections 145/146 of the Code in these circumstances, proceedings cannot be considered to be an abuse of the process of the Court. The proceedings cannot be quashed for securing the ends of justice.

11. There is another aspect of the matter. The object of Sections 145/146 of the Code is to take preventive action where there is a dispute regarding actual possession of land between two or more parties to prevent breach of peace. There is thus no necessary conflict between the proceedings under sections 145 and 146 of the Code on the one hand and the proceedings in the civil court.

12. For the reasons stated above, I find no merit in the petition, which is dismissed.