
(1993) 12 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4329-M of 1993

Mahant Gurdev Dass Chela Mahant Uttam Dass

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Citation : (1994) 2 Crimes 270 : (1994) 2 RCR(Criminal) 348

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : Jagmohan Chaudhry, H. N. Mehtani, Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. The present petition has been filed by Mahant Gurdev Dass under Section 482 Cr.P.C. for quashing the police report dated 28.3.1993 Annexure p/5 and notice dated 30.3.1993 Annexure p/6 issued by Sub Divisional Magistrate, Malerkotla and also the proceedings initiated under Section 145 Cr.P.C.

2. The brief facts of the case are that Vikram Singh, Station House Officer, Police Station, Malerkotla reported to Sub Divisional Magistrate, Malerkotla that there was a Dera in village Mithewal to which land measuring 147 Bighas was attached. Mahant Uttam Dass was the manager of the Dera and on his death the land was mutated in the name of Kesar Dass on 16.6.1992 on the ground that he was his Chela. The entries in the Khasra Girdawari since 1987 were in the name of Joginder Dass, brother of Kesar Dass. On 25.12.1991 people of village Mithewal constituted a committee consisting of seven members for the management of the property of the Dera and later on this Committee and the Panchayats of adjoining villages appointed Gurdev Dass, Chela Uttam Dass, as the Mahant. Kesar Dass in fact was never appointed as Mahant by Uttam Dass in his life time and he was only related to Mahant Uttam Dass being his nephew. Mahant Gurdev Dass claimed to be in possession of the property belonging to Dera, while on the basis of mutation and entries in the Khasra Girdawari in the name of Joginder Dass the respondents asserted their possession over the property. There was, thus, a dispute regarding possession of the property which

could result in the commission of a heinous crime.

3. In view of the above report and other material placed before him, the Sub Divisional Magistrate, Malerkotla felt satisfied that there was a dispute between Mahant Kesar Dass etc. Party No. 1 and Mahant Gurdev Dass and others Party No. 2 over 147 Bighas of land situated in revenue estate of village Mithewal, so he issued notice to the parties to appear before him and file their respective claims.

4. Mahant Gurdev Dass alleged that he had been installed as a Mahant by the panchayats of 12 villages after performance of formal ceremonies for the better management of the property of Dera and he was actually managing the property by giving it on lease to various persons when respondent No. 1 started interfering in his management. He had already filed a suit for declaration that he was the manager and had a right to manage the property and Sub Judge Ist Class, Malerkotla was seized of the matter. Proceedings under Section 145 Cr.P.C. in these circumstances could not be initiated against him and were liable to be quashed.

5. In the return filed by Sub Inspector Rajinder Singh, Station House Officer, Police Station, Malerkotla it was submitted that petitioner was in possession of the property of Dera but respondents No. 2 and 3 also claimed possession on the basis of entries in Khasra Girdawari. There was apprehension of breach of peace arising out of the land dispute, therefore, proceedings under Section 145 Cr.P.C. were initiated.

6. Respondents No. 2 and 3 filed their separate reply denying that the petitioner was ever appointed as a Mahant of the Dera and it was pleaded that Mahant Uttam Dass in the presence of various persons nominated Kesar Dass as Mahant, and he had been managing the property of the Dera even during the life time of Mahant Uttam Dass. A Will was also executed in his favour by the earlier Mahant. Respondent No. 3 was in cultivating possession of the land since the year 1985 and the petitioner was never in active control or possession of the property.

7. I have heard the learned counsel for the parties and have perused the record.

8. The main argument addressed on behalf of the petitioner was that the petitioner was appointed as Mahant of the Dera and he was in possession of the property. As per report on the basis of which proceedings under Section 145 Cr.P.C. were initiated petitioner was in possession. The petitioner had also filed a suit for declaration claiming himself to be the Manager of the Dera so there was no necessity of initiating proceedings under Section 145 Cr.P.C. The same amounted to an abuse of the process of the Court and were liable to be quashed.

9. This contention of the learned counsel is without force. A perusal of the report Annexure P/5 shows that both the parties claimed possession over the property in dispute. The petitioner alleged that he was appointed as a Mahant by the panchayats of various villages and he started managing the property of the Dera.

Respondent No. 2 alleged that he was nephew of the former Mahant who executed a Will in his favour. He was also his disciple and during his life time he nominated him as a Mahant. The property of the Dera was also in possession of respondent No. 3 and khasra girdawaris were in his name. The police report further shows that there was a dispute regarding possession of the land between the parties which could result into a murder even. All these facts were taken note of by the Sub Divisional Magistrate and after he felt satisfied that the dispute between Party No. 1 and Party No. 2 was likely to occasion a breach of peace, he issued notices to them to appear and file their respective claims. The object of Section 145 of the Code is to prevent a breach of peace and the action taken is not punitive but preventive. There is nothing on record to show that any civil litigation is pending between the parties where question of possession is involved. Annexure P/2, copy of the plaint, shows that the petitioner filed a suit for declaration that he was the manager of the Dera and he had a right to manage the property of the Dera and to get the revenue papers corrected. He did not claim any relief restraining the respondents from interfering in his possession. The relief of injunction was confined to restrain the respondents from interfering in the management of the Dera and from causing any damage to the property of the Dera and to transfer the same. Vide order dated 4.8.1992 Annexure P/2 Kesar Dass was restrained from alienating, selling or mortgaging the suit property till 20.8.1992.

10. Annexure R/7 shows that subsequent to the issuance of notice to both the parties the land in question was attached and an official receiver was appointed. That order dated 4.5.1993 was assailed by the petitioner and others by way of revision which was dismissed on 7.8.1993. It is alleged on behalf of the respondents that the property is now in possession of the official receiver. As there was dispute regarding possession of land which was likely to occasion breach of peace, the Sub Divisional Magistrate rightly initiated the proceedings under Section 145 Cr.P.C. and issued notice to the parties to submit their claims. There is no merit in this petition and the same is dismissed.