
(1987) 01 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 1545 of 1986

Mahant Madhusudandas Guru Mahant Manmohandas
Satyanarayan Temple, Baghana

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 21-01-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 145(1), 145(6), 146

Citation : (1987) MPLJ 481

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : A.J. Bhojwani, for the Appellant; Surjeet Singh, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Shrivastava, J.

This is an application u/s 482 of the Code of Criminal-Procedure, 1973 (for short the Code") directed against the revisional order dated 17-7-1986 passed by the Additional Sessions Judge, Neemuch in Criminal Revision No. 157 of 1984 whereby the order of attachment passed by the learned Sub-Divisional Magistrate, Neemuch u/s 146(1) of the Code has been confirmed.

Circumstances giving rise to this petition are these. There is one temple by name "Satyanarayan Temple" at Baghana, Neemuch. Some agricultural lands are attached to this temple. There is dispute between the petitioner Mahant Madhusudandas and one Jankidas regarding the possession of those agricultural lands.

On information laid by Baghana police on 15-9-1983, the learned Sub-Divisional Magistrate, Neemuch initiated proceedings u/s 145 of the Code and passed the preliminary order u/s 145(1) of the Code the same day.

During the pendency of those proceedings, the Station House Officer Baghana on 21-1-1984 moved an application for attachment of the aforesaid agricultural lands and the learned Sub-Divisional Magistrate on 21-11-1984 passed an order attaching the said property.

The present petitioner preferred a revision petition. The Additional Sessions Judge, Neemuch has dismissed the same. The petitioner, therefore, has approached this Court invoking its inherent powers u/s 482 of the Code.

The contention of the learned counsel for the petitioner is that the learned Addl. Sessions Judge erred in confirming the order passed by the learned Sub-Divisional Magistrate. According to him in passing the order of attachment, the learned Sub-Divisional Magistrate failed to bear in mind the distinction between the provisions in Section 145(1) and Section 146(1) of the Code. In support of his submission he has placed reliance on the decisions in State of M. P. vs. Chunnilal (1974 M.P.L.J. 50) and State of M.P. vs. Ramkrishna and others (1976 M.P. W.N. 133).

The contention of the learned counsel appearing for the State is that though the order passed by the learned Sub-Divisional Magistrate does not expressly mention about any emergency the fact that such a state exists is borne out from the material on record.

The point for consideration is whether interference in exercise of the inherent powers is called for in this case.

From a perusal of Section 145(1) and Section 146(1) of the Code which respectively provide for the preliminary order and the order of attachment it is clear that they contemplate different situation and require different material to sustain the orders they provide for. Satisfaction of the Sub-Divisional Magistrate as to the existence of a dispute likely to cause a breach of peace constitutes the foundation for the preliminary order u/s 145(1) but unless the Magistrate considers the case to be one of emergency, order of attachment u/s 146(1) cannot be sustained. Thus an order for attachment of property requires additional material.

The provision in Section 146(1) of the Code as to attachment is in these terms

Power to attach subject of dispute and to appoint receiver. - (1) If the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard

to the subject of dispute.

In the decision in Nanuram's case (1986 (1) M.P. W.N. 182) this court has held that where "emergency" ex facie appears on the record, the mere non-mention of the word "emergency" in the impugned order will not render it illegal or invalid.

In the instant case, it is found that Mahant Madhusudan Das and Mahant Jankidas both claim themselves to be the heirs of Mahant Balramdas and are laying rival claims to the property in dispute. It is with a view to preserve the public peace till the determination of the rights of the rival claimants over the subject of dispute that the Legislature has framed the scheme under Sections 145 and 146 of the Code which have to be read together. If the situation so demands, the preliminary order u/s 145(1) has to be followed by an order of attachment of the property in any of the three Contingencies contemplated u/s 146(1) of the Code. Where the order of attachment is passed on the ground of emergency, the proceedings have to be continued to determine the question of actual possession to be followed by an order u/s 145(6) *ibid*. If no such finding is possible the attachment should be continued till the title is decided by competent civil Court. In the instant case it was only after more than 3 months of the preliminary-order dated 15-9-1983 that the application for attachment of the property was moved and it was several months afterwards after recording evidence of some witnesses upto 8-2-1984 and after hearing arguments on 3-10-1984 that the order of attachment was passed. The learned Sub-Divisional Magistrate has also stated in his order that proceedings u/s 107 of the Code had also to be taken in relation to the property. It is, however, enigmatic that despite the question of emergency the order of attachment could not be passed till about more than 9 months since the recording of evidence.

As a result of the foregoing discussion it is clear that the case was one of emergency and the impugned order maintaining the order of attachment passed by the learned Sub-Divisional Magistrate cannot be characterised as one liable to be interfered with under inherent powers of this Court.

Section 482 of the Code relating to inherent powers of the Court reads thus:

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.

It may be noted that under the provision a party gets no vested right or inherent right to seek interference. In exercise of that jurisdiction the Court itself steps in only to meet the contingencies therein catalogued. It may be pointed out that even where the Courts below have committed any error of law or fact that by itself does not furnish any foundation for interference u/s 482 of the Code. That discretionary jurisdiction is not to be exercised as revisional or appellate

jurisdiction.

In the result, the application u/s 482 of the Code fails and is dismissed. The petitioner if there is a case under the proviso to sub-section (1) of Section 146 of the Code may apply to the learned Sub-Divisional Magistrate for withdrawing the order of attachment.