
(1986) 03 GAU CK 0013
In the Gauhati High Court
Case No : Criminal Revision No. 32 of 1981

Mangturam Sanganerla

APPELLANT

Vs

Shri Kartik Bhowmick and Another

RESPONDENT

Date of Decision : 19-03-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146, 397, 397(2)

Citation : (1986) 2 GLR 177

Hon'ble Judges : K. Lahiri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Lahiri, J.—This revision is directed against the concurrent findings or fact of the courts below. The proceedings u/s 145 of the Code of Criminal Procedure, registered as Misc. Case No. 695 M 80, was dropped by the Executive Magistrate by order dated 5.1.1981.

2. The relevant facts are that the 1st party Petitioner filed an application dated 16.12.1980 before the Executive Magistrate, Gauhati claiming that he was the owner of Stall No. 14A in New Market, Gauhati, which was, let out to the second party as a tenant. The second party temporarily vacated the room for a period of 6 months but after sometime re-occupied it and started his shop without obtaining permission from the first party-Petitioner. The First party-Petitioner was afraid of the second party as he was a quarrelsome person. He claimed that there was apprehension of breach of peace, in respect of the possession of the shop room. The application was forwarded to the police for inquiry and report. The police submitted a report stating that there was apprehension of breach of peace between the parties. Accordingly, learned Magistrate drew up a proceeding u/s 145(1) Code of Criminal Procedure and directed both the parties to file written statement and adduce evidence or documents in support of their respective claim of possession over the disputed room. Meanwhile the learned Magistrate directed the police to attach the room u/s 146 Code of Criminal

Procedure. On 5.1.81 learned Executive Magistrate upon hearing both the parties dropped the proceedings and held that it was a civil dispute. In other words, learned Magistrate directed the Petitioner to seek relief in civil Court. Being aggrieved the first party-Petitioner preferred a revision before the Sessions Judge, Kamrup at Gauhati.

3. Learned Judge discussed all the points urged and upheld the order dropping the proceedings. It is a speaking order. Learned Judge has considered all aspects of the matter. I find that the proceeding which was drawn in 1980 was dropped in 1981 and the order was affirmed in 1981. It has come up for disposal to-day before this Court.

4. The first question is whether this Court can entertain this revision and/or whether the Petitioner is competent to prefer this revision. Section 397(2) of the Code lays down that if an application u/s 397 i.e. an application for exercising revisional power, has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. In view of the restriction imposed u/s 397(3) this Court is incompetent to entertain the second revision petition filed by the Petitioner who was the Petitioner in the revision before the learned Sessions Judge. As such, in my opinion, this Court is not competent to entertain the present revision. Section 399(3) prohibits the Court to entertain successive revision petition by the same party. Section 399(3) reads as follows:

399. * * *

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

(Emphasis supplied)

It is thus seen that where any application for revision is made by or on behalf of any such person before the Sessions Judge, the decision of the Sessions Judge thereon is final. It is further stated in the Sub-section that the revisionist cannot file another revision to the High Court against the final order of the Sessions Court. Under these circumstances this Court cannot entertain this petition u/s 399(3) of "the Code". On this ground alone the petition is liable to be dismissed.

5. Further, in the instant case the Petitioner has an alternative remedy to institute a civil suit and get the relief, if he is so advised. Instead of filing a civil suit and asking for an appropriate relief the Petitioner has filed the revision petition. The Petitioner could have filed a civil Court to obtain an injunction. For the foregoing reasons I hold that this petition is not maintainable as he has an alternative efficacious remedy, namely civil suit.

6. In *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, the Supreme Court has ruled that when a civil litigation is pending for the property, wherein question

of possession is involved and has been adjudicated, initiation of parallel criminal proceedings u/s 145 of the Code would not be justified. The parallel proceedings should not be permitted to continue and the criminal Court should not be allowed to invoke its jurisdiction when the question of possession is being examined by the civil Court. Their Lordships have stated that multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. The spirit of the law laid down by the Supreme Court is that proceeding u/s 145 should be drawn up and continued when public order and tranquility is jeopardized. If the disputes are private disputes or not required to be taken care of, for maintenance of public order and tranquility they should be dropped with a direction to the parties to fight out the litigation in an appropriate civil Court. Section 145 falls in Chapter X of the Code and deals with "maintenance of public order and tranquility". Indeed, if it is a private dispute between two sets of persons the criminal court should not entertain a proceeding u/s 145. However, if the dispute is required to be resolved to maintain public order and tranquility the criminal court may exercise power u/s 145 Code of Criminal Procedure. In the instant case, admittedly, it was property belonged to some one else and the fight is for the occupation of a stall in respect of which the individuals were claiming their right to occupy the stall. When both, the courts reached the conclusion that it was a civil dispute, that is to say, the proceeding u/s 145 Code of Criminal Procedure was unnecessary, this Court cannot interfere with the findings. The aggrieved party may file a suit and ask for an injunction if entitled to under the law. Why should the criminal Court interfere in dispute between two individuals in their private dispute. If the circumstances call for taking action to set at rest a dispute which might affect law and order or public tranquility, the court may exercise power u/s 145 Code of Criminal Procedure. I find on perusal of the order of learned Additional Sessions Judge that he was absolutely justified in reaching the conclusion that the order directing the first party-Petitioner to take resort to civil action was just, proper and appropriate. I do not find any ground to differ from the view expressed by the learned Judge.

7. In the result the petition is dismissed.