

(1988) 07 AHC CK 0002
In the Allahabad High Court
Case No : Criminal Revision No. 257 of 1988

Manohar Chaturvedi

APPELLANT

Vs

Ramanji Chaturvedi and Others

RESPONDENT

Date of Decision : 22-07-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 145, 145(1), 145(4)

Citation : (1988) 12 ACR 533

Hon'ble Judges : H.C. Mittal, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; K.N. Tripathi, B.N. Misra and M.P. Pandey, for the Respondent

Judgement

H.C. Mittal, J.—Sri Manohar Chaturvedi, the Petitioner, has preferred this revision against the judgment and order dated 6th January, 1988 of the City Magistrate, Mathura, for dropping the proceedings u/s 145 Code of Criminal Procedure.

2. The facts of the case in brief are that the property in dispute is a temple of Sri Dau Ji Maharaj alongwith a Gaushala in Mohalla Satagharah of Mathura city which were in existence for the last 75 years. In this revision it is alleged that Sri Gullu Chaube, grand father of the revisionist was the Mutawalli of the said temple and he looked after it till his death in about 1930. Thereafter the present revisionist, though he was only a child became its Mutawalli and has been in continuous and uninterrupted possession for the last 57 years. It is further alleged in this revision that the revisionist in his capacity as Mutawalli and manager of the temple property, appointed Sri Bamanji as a Pujari and his agent for performance of Pooja etc. and looking after his affairs in his absence, that in the year 1980 the revisionist retired from the Indian Police Service and then he came to know that the Respondents had caused extensive mis-use and damage to the property in dispute and had converted the temple into their own residence and started indulging in orgy of various crimes, that they had also broken the locks of the Toshakhana and other rooms which were in possession of the

revisionist, hence he lodged a first information report in the Kotwali at Mathura on 26-5-1985 and also moved an application u/s 145 Code of Criminal Procedure on 6th July, 1985. The Magistrate on receipt of report from P.S. Kotwali Mathura passed the preliminary order u/s 145 Code of Criminal Procedure on 17-7-1985 and also passed an order u/s 146(1) Code of Criminal Procedure to attach the property. The opposite party No. 3 had however also moved an application on 17-7-1985 itself opposing passing of any ex-parte order u/s 146(1) Code of Criminal Procedure without giving the opposite parties an opportunity of being heard. In that application Sri Chhotey Lal opposite party No. 3 had specifically alleged that he and his father Bamanji Chaturvedi opposite party No. 1 and their family were residing for the last over 30 years while the Petitioner was living out of Mathura and had his own residence at Gokhle Marg, Lucknow and was living there after his retirement, that the opposite parties had their ration card and names in the voters list for the last over 30 years and their children's address in the school was also recorded as that of the property in dispute. The learned Magistrate instead of postponing the attachment of the property u/s 146(1) Code of Criminal Procedure passed order there under and the Magistrate called for report from P.S. Kotwali on the application of the opposite party. The revision against the order u/s 146(1) Code of Criminal Procedure however was also rejected and ultimately on 18-11-1984 by the impugned order the learned Magistrate quashed the proceedings and directed the Supurdar to handover back the possession to the party from whose possession it was taken. He had further ordered that after the quashing of the proceedings if there was any apprehension of breach of peace then proceedings u/s 107/116 Code of Criminal Procedure may be taken by the police.

3. During the pendency of the proceedings the Respondents filed a civil suit wherein an exparte injunction dated 21-10-1987 was granted in their favour and against it the present revisionist preferred F.A.F.O. No. 3 of 1988 in this Hon'ble Court which was decided on 21-3-1988 by Hon'ble Mr. Justice N.N. Mithal. The F.A.F.O. was allowed and the following order was passed:

In the circumstances, the appeal is allowed and the order of injunction dated 21-10-1987 is set aside However, this order will continue to remain in force for a period of three weeks from today during which period injunction matter will finally be disposed of by the Court below, parties are left to bear their own costs in this appeal ".

4. It was admitted that so far as the objection had not yet been decided on merits because of some technical defects. Bamanji Chaturvedi, Respondent No. 1 has also since expired. In this revision the main ground canvassed on behalf of the Petitioner, by him personally as he himself argued the case, is that the order of the learned Magistrate quashing the proceedings merely because a civil suit was pending between the parties could not be a ground for quashing them. There can be no doubt that merely because a civil suit is pending between the parties regarding the property in dispute that itself alone should not be a ground

for quashing the proceedings unless the circumstance of the case otherwise so warrant.

5. On behalf of the Petitioner a plethora of rulings have been cited. All those rulings need not be quoted. However, on behalf of the revisionist much reliance has been placed on the decision of the Hon''ble Supreme Court in the case of R.H. Bhutani v. Miss Mani J. Desai 1969 AWR 59. In brief the facts of that case were that all material times Miss Mani J. Desai had her office premises in the Nawab Building, Fort, Bombay which consisted of two cabins. On July 10, 1964, she entered into an agreement with the Appellant permitting him to occupy one of the cabins on leave and licence for a period eleven months. Subsequently the agreement was extended for a further period of eleven months. According to the Appellant it was further extended for another eleven months from May 10, 1966, Respondent No. 1 accepted Rs. 450/- as compensation for May 1966. Respondent No. 1 thereafter demanded higher compensation which the Appellant refused to pay and, therefore, the Respondents refused to execute the renewal and threatened to eject him forcibly if he did not vacate. It was further alleged that on June 11, 1966 Mani J. Desai, Respondent No. 1 broke open the staple of the cabin, removed the door from its hinges, removed all his belongings lying in the cabin and dumped them in the passage outside. She then handed over possession of the cabin to Respondents Nos. 2 and 3 purporting to do so under an agreement of licence dated June 1, 1966. The Appellant therefore went to the police station, but the police refused to take action and only recorded non cognizable complaint. From the police station he and his friend returned to the cabin, when on their demanding possession of the cabin, the Respondent attacked them. Thereafter again the matter was reported to the police which again refused to oblige by taking any action except recording another non cognizable complaint. Due to the persistent refusal by the police to help him to get back the cabin, the Appellant approached higher authorities. Thus there was every material of breach of peace and therefore the Appellant filed a complaint before the Additional Chief Presidency Magistrate u/s 145 Code of Criminal Procedure. Thereafter the parties filed affidavits.

In the meantime Respondent No. 1 filed suit in the City Civil Court and took out a notice of motion for restraining the Appellant from interfering with her possession of the cabin. The Court dismissed the notice of motion refusing to rely on the said agreement.

The main question before the Magistrate was whether the Appellant was in actual possession on June 11, 1966 and whether he was forcibly and wrongfully dispossessed by Respondent No. 1 or whether he had vacated and surrendered the cabin to Respondent No. 1. It was however admitted in her written statement that though she had not renewed for the second time the licence in May 1966 but at the request of the Appellant she had permitted him to continue in possession till May 1965 on his promising to vacate it by the end of that month and that on 11th June, 1966 the Appellant vacated the cabin. The Magistrate

held that the Appellant was in actual possession on 11th June 1966 and she was dispossessed within two months from the date of the passing of the preliminary order, he directed the restoration of the possession to the Appellant. The revision was preferred before the Hon"ble Court of Bombay. The High Court allowed the revision. On being aggrieved the Appellant had approached the Hon"ble Supreme Court, thereupon their Lordship made the following observations:

The object of Section 145, no doubt is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the Court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined by a competent Court. The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under Sub-section (1) and thereafter to make an enquiry under Sub-section (4) and pass a final order under Sub-section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist. The enquiry u/s 145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties. Under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the enquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in the case the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the Magistrate would then proceed to make his final order directing the dispossession to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of Section 145".

In view of the above law laid down by their Lordships of the Hon"ble Supreme Court the Petitioner argued that the learned City Magistrate should have completed the enquiry as envisaged u/s 145 Code of Criminal Procedure regarding the possession on the date of preliminary order or the dispossession, if any, of any party within two months preceding the date of that order.

6. The learned Magistrate has, however, dropped the proceedings while passing the impugned order mainly on the ground that a litigation in the civil Court is pending regarding the property in dispute in between the parties and as held by their Lordship of the Supreme Court in the case of Ram Sumer Puri v. State of U.P. 1985 AWC 128, the proceedings were liable to be dropped.

7. In the case of Ram Sumer Puri (supra) a civil litigation was pending of the

property wherein the question of possession was involved and had been adjudicated. It was held that initiating parallel criminal proceedings u/s 145 Code of Criminal Procedure would not be justified as multiplicity of litigation was not in the interest of the parties. In that case in respect of the very property there was a suit for possession and injunction in the Court of Civil Judge, Bareilly in which the question of title was gone into and by judgment dated February 28, 1981 the said suit was dismissed. Ram Sumer Puri Appellant before their Lordship of the Supreme Court was the Defendant in that suit. Hence the appeal was allowed.

8. In the present case, however the civil suit preferred by the opposite parties was not pending on the date of preliminary order. From the copy of the plaint filed in the Court below along with the affidavit by Sri Arun Kumar Chaturvedi, opposite party No. 4, in this petition, it is apparent that the suit was filed sometime in October, 1987 (date of the plaint is not given in the copy filed), as it is specifically mentioned therein that the cause of action for the suit arose to the Plaintiffs on 11-10-1987 when the Defendants Nos. 1 to 3 (Defendant No. 1 is the Petitioner, Manohar Lal Chaturvedi expressed their unlawful intention to take forcible possession).

9. On a perusal of this plaint it is clear that the facts that a preliminary order dated 17-7-1985 u/s 145 Code of Criminal Procedure was passed and thereafter u/s 146(1) Code of Criminal Procedure an order for attachment was passed on 18-7-1985 and the property was also attached immediately thereafter were not mentioned. It was, however, indirectly alleged that Manhoar Lal Chaturvedi in collusion with the police and the City Magistrate was trying to take forcible possession, he being a retired I.P.S. Officer. On the basis of that plaint an interim injunction order against Manohar Lal Chaturvedi was passed Had it been specifically alleged that there was already an order of attachment and the property had been attached and thereafter revision against that order of the Plaintiff had also been dismissed, the Civil Judge normally would not have granted any interim exparte injunction order against the Petitioner. The present Petitioner preferred F.A.F.O. No. 3 of 1988 in this Court and it was decided on 21-3-1988 allowing the appeal and setting aside the order of injunction dated 21-10-1987. The Court, however, further ordered that the injunction order would continue to remain in force only for a period of three weeks from that date during which period injunction matter would be finally disposed of.

10. In view of the above it is clear that civil suit was filed in October 1987 after not only attachment of the property had already been carried out u/s 146(1) Code of Criminal Procedure but opposite parties revision against that order had also been dismissed. Their appears sufficient force in the contention of the Petitioner that the suit was filed with a view to obstruct the proceedings u/s 145 Code of Criminal Procedure.

11. Under the circumstances, prima facie, even though a civil suit for injunction had been filed but subsequent to the confirmation of the attachment order by the Court in revision there could be no ground for dropping the proceedings u/s 145

Code of Criminal Procedure as ordered by the City Magistrate by the impugned order.

12. On behalf of the Respondent it was also urged that as there was no apprehension of the breach of peace the dropping of the proceedings u/s 145 Code of Criminal Procedure was also justified on that ground. The impugned order nowhere contains that the learned City Magistrate found that there no longer was any apprehension of the breach of peace in between the parties. That apart, as held by the Hon''ble Supreme Court in the case of R.H. Bhutani (supra) and in subsequent decision in the case of Rajpati Vs. Bachan and Another, , it is not necessary that the breach of peace should continue at every stage of the proceeding unless there is clear evidence to show that the dispute has ceased to exist so as to bring the case within the ambit of Sub-section (5) of Section 145 Code of Criminal Procedure the proceedings have to be carried to their logical and culminating in the final order under Sub-Section (6) of Section 145 Code of Criminal Procedure.

13. The present revision is liable to be allowed on another ground as well. The record of the Court below indicates that the police could not carry out the order of the Magistrate to deliver possession to the party from whom it was attached as the police reported that at the time of attachment the possession was in dispute and it could not be said as to which party was in possession. Hence it is for the City Magistrate to decide as to which party was in possession on the date of the preliminary order or whether any party was dispossessed within two months preceding the date of the preliminary order.

14. The conclusion, therefore, is that the revision is allowed and the impugned order dated 6th January 1988 of the learned City Magistrate is hereby set aside. The record of the case shall be sent back to the City Magistrate for speedy disposal of the proceedings u/s 145 Code of Criminal Procedure in accordance with law and the observations made above.