
(1987) 02 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5794-M of 1985

Manzooran

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 04-02-1987

Acts Referred:

Citation : (1987) 1 AICLR 325 : (1987) 1 RCR(Criminal) 405

Hon'ble Judges : Pritpal Singh, J

Advocate : Harbans Singh, Amarjit Markan, Jatinder Singh, Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. By means of this petition under Section 482 of the Code of Criminal Procedure (for short the Code) the petitioner Mst. Manzooran has challenged the validity of proceedings taken by the SubDivisional Magistrate, Malerkotla, under Sections 145 and 146 of the Code.
2. Admittedly regarding the disputed land respondent No.3. Zileadar Khan, filed a civil suit against the petitioner and others claiming permanent injunction restraining the defendants from interfering in his possession. During the suit proceedings the trial Court passed an order of maintenance of status quo regarding possession. The suit is still pending.
3. On a complaint of respondent No. 2, Mst. Salamat, proceedings under Section 145 of the Code were initiated by the Sub Divisional Magistrate, Malerkotla, vide an order dated September 10, 1985 (Annexure P.7). Subsequently, the Magistrate passed an order under Section 146 of the Code on October 4, 1985 (Annexure P.9), whereby a Receiver was appointed to take possession of the disputed land.
4. It was conceded by the learned petitioner's counsel that there is no infirmity in the order (Annexure P7) by which proceedings under Section 145 were initiated. His contention however, is that subsequent order under Section 146

(Annexure P.9) deserves to be quashed. In my view this contention is not without merit. It has been held by this Court in *Iqbal Singh v. The State of Haryana and others*, 1985(2) Recent Criminal Reports 409 : 1985(1) P.L.R. 438 , that :

"The order of the Civil Court must be respected even while initiating proceedings under Section 145, Code of Criminal Procedure. If the civil Court passes a order of status quo regarding maintenance of possession it inheres in that order that the civil Court could not on the existing material decide as to which out of the contending parties was in possession, and if the contention of either one of them supposedly was right then, maintaining the possession of that party.

"It was further observed that :

"The Magistrate can well initiate proceedings under Section 145 of the Code of Criminal Procedure to decide which party was in possession because the Civil Court, while passing orders of status quo was unsure as to which of the parties was in possession. But at the same time for prevention of breach of peace it can have resort to proceedings under Section 107, Code of Criminal Procedure, and not to attach property under Section 146, Code of Criminal Procedure, as that would tend to violate the order of the Civil Court by dispossessing the party, who was ordered to be left in possession by the order of maintenance of status quo."

Agreeing with this view the impugned order dated October 4, 1985 (Annexure P.9) whereby a Receiver was appointed by the learned Magistrate to take possession of the land in dispute cannot be upheld, because it will cause dispossession of the party whosoever was in possession of the land in violation of the order of the Civil Court. For prevention of breach of peace the Magistrate can resort to the provision of Section 107 of the Code.

5. For the foregoing reasons this petition is partially accepted. The order dated October, 1, 1985 (Annexure P.9) of the learned Sub Divisional Magistrate appointing Receiver of the land in dispute is quashed leaving it open to him to take suo motu proceedings under Section 107 of the Code. This petition is disposed of in these terms.