
(1996) 09 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11720-M of 1995

Mota Singh

APPELLANT

Vs

Executive Magistrate, Amritsar

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Citation : (1996) 3 AICLR 712 : (1997) 1 RCR(Criminal) 67

Hon'ble Judges : P.K.Jain, J

Advocate : N.K. Sammi, H.S. Giani, Advocates for appearing Parties

Judgement

P.K. Jain, J.

1. This petition has been filed under Section 482 of the Code of Criminal procedure (hereinafter referred to as "the Code") for quashing the proceedings initiated under Section 145 of the Code and pending in the Court of Executive Magistrate, Amritsar.

2. The facts necessary for the disposal of this petition are that Amrik Singh, respondent No. 2 herein, addressed a complaint dated 19.8.1994 (Annexure P1) to the Station House Officer, Police Station, Chheharta Sahib, alleging therein that on 18.8.1994 at about 11.00 a.m. he was detained at the said Police Station, and his absence, Mota Singh along with others, with the help of police demolished the chhabeel (a small place for storing water). It has been further stated that all those persons were drunk and were abusing his family members and that Mota Singh had threatened him with dire consequences. He sought protection from the said S.H.O.

3. On the same day, Amrik Singh moved a complaint (Annexure P.2) before the Executive Magistrate alleging therein that he was having the said small water tank in the name of Baba Kharak Singh for the last 7 yeas and S. Mota Singh Thekedar had demolished the same and illegally occupied the same with the help of the police. It was further alleged that Mota Singh had threatened him with dire consequences. He levelled allegations of illegal detention and harassment on the

part of the police. He also alleged that the situation can deteriorate further resulting in murders.

4. On the said complaint (Annexure P.2), the Executive magistrate made a note "to be discussed with D.C.". Thereafter the said Executive Magistrate inspected the spot in dispute on 22.8.1994, made enquiries on the spot and recorded his report dated 22.8.1994 (Annexure P.3) stating therein that due to the said illegal action of Mota Singh with the help of others, there was a lot of resentment in the village and an apprehension of breach of peace. Consequently, proceedings under Section 145 of the Code have been initiated.

5. It has been stated in the present petition that the proceedings have been initiated by the Executive Magistrate after inspecting the spot and preparing a report; that the entire dispute related to a spot from where drinking water was being made available to the people and the cattle, that the petitioner had thereafter filed a suit on 31.3.1994 against respondent No. 2 for a decree of permanent injunction, thereby restraining him from interfering in the peaceful possession of the petitioner over Khasra N. 113Min wherein on application filed under JUDGMENT 39 Rules 1 and 2 of the Code of Civil Procedure, an ad interim injunction had been granted in favour of the petitioner thereby holding that the petitioner is in possession of the said land, and as such the proceedings under Section 145 of the Code cannot proceed.

6. On a notice, respondent No. 2 has reiterated the averments made by him in his two complaints (Annexures P.1 and P.2) and has pleaded that the civil suit relates to Khasra No. 1133Min whereas the dispute in the proceedings under Section 145 of the Code relates to Khasra No. 1130 and 1131. He has supported action of the Executive Magistrate.

7. After hearing the learned counsel for the parties at length, I am of the view that the order dated 22.8.1994 (Annexure P.3), passed by the Executive Magistrate and initiation of proceedings under Section 145 of the Code based on the said order are liable to be quashed being in violation of the express provisions of Section 148 of the Code.

8. This section, so far as it is relevant for our purposes, reads as under :

"148. Local inquiry : (1) Whenever a local inquiry is necessary for the purposes of Section 145, Section 146 or Section 147, a District Magistrate or SubDivisional Magistrate may depute any Magistrate subordinate to him to make the inquiry and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid."

From a bare reading of this Section, it is evident that the Executive Magistrate holding the enquiry under Section 145 of the Code cannot inspect and hold that local enquiry himself. He has to refer the matter to the District Magistrate or to the SubDivisional Magistrate for deputing a Magistrate for that purpose. If,

instead of referring the matter to the District Magistrate or a SubDivisional Magistrate, as envisaged by this Section, the Executive Magistrate, before whom the proceedings under Section 145 of the Code are pending, himself proceeds to inspect the spot and to proceed and to hold a local enquiry, his action is illegal being in violation of Section 148 of the Code. This view finds affirmation in a decision of the Patna High Court rendered in Deo Prasad Saha and others v. Ravi Ravidas and others, 1990 Cr.L.J. 823, and that of the Gauhati High Court in Nila Kanta Das and another v. Uday Narayan Upadhyaya, 1983 Cri.L.J. NOC 121 (Gau.).

9. It may be further pointed out that an Executive Magistrate is bound to call upon the parties to state their respective case and to produce their evidence in support thereof. He is also bound to make independent enquiry under Section 145(4) of the Code; he cannot inspect the spot in dispute and make local enquiry himself to initiate action under Section 145 of the Code. Therefore, the action of the Executive Magistrate in initiating proceedings under Section 145 of the Code merely on the basis of his spot inspection and local enquiry is bad in law. In these circumstances, I need not go into other aspects of the matter.

10. As a result of the above discussion, this petition is allowed. The proceedings initiated by the Executive Magistrate, respondent No. 1 herein, and his order dated 22.8.1994 (Annexure P3) are hereby quashed. However, it shall be open to the said Executive Magistrate to proceed on the complaint dated 19.8.1994 (Annexure P2), if the present facts and circumstances so justify, to initiate any action under the provisions of the Code.