

(2016) 12 MP CK 0062
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 347 of 2016

Munna Khan

APPELLANT

Vs

Mustak Ahmad

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Criminal Procedure Code, 1973 (CrPC) — Section 145, Section 482

Citation : (2017) 1 MPWN 159

Hon'ble Judges : Vivek Agarwal, J.

Bench : Single Bench

Advocate : Shri R.K. Soni, Learned Counsel, for the Petitioners; Shri R.K. Upadhyay, Learned Counsel, for the Respondent No. 1; Smt. Anjali Gyanani, learned Govt. Advocate, for the Respondent/State No. 2

Final Decision : Allowed

Judgement

Vivek Agarwal, J.—This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 17.11.2015 passed by the Third Additional Sessions Judge, Shivpuri, in Criminal Revision No.113/2014, whereby the order passed by the Sub Divisional Magistrate, Shivpuri, in Case No.12/2009 under Section 145 of Cr.P.C. dated 7.7.2014 has been confirmed.

2. The brief facts leading to the present petition are that SHO, police Station Physical Chowki, Shivpuri, filed a complaint under Section 145 of Cr.P.C. before the Sub Divisional Magistrate, Shivpuri, on the ground that dispute between the parties is likely to cause a breach of peace. The dispute was regarding the property situated near Motibaba Temple Road Survey No.112 Ward No.92. It is alleged that respondent No.1 wants to take possession of the property on the basis of sale-deed dated 23rd January, 2006. It is further submitted that petitioners have filed a civil suit which is pending in the Court of Third Additional District Judge bearing RCS No.04-A/2012 and there is an interim order not to disturb the possession of the petitioners. It is further submitted that before SDM

prayer was made for rejecting the case under Section 145 of Cr.P.C. on account of pendency of civil suit and also the fact that petitioners are in possession of the suit property, but without considering the said documents and injunction order passed by the trial Court, the SDM passed order on 7.7.2014. It is further submitted that petitioners have already filed a private complaint against respondent No.1 before the CJM Shivpuri in respect of the said forged sale-deed and the Revisional Court without considering the merits of the case affirmed the order of the SDM passed under Section 145 of Cr.P.C. The main ground which has been taken by the petitioners is in regard to pendency of the civil suit and also the fact that a private complaint is pending before the Court of CJM, therefore, SDM should not have passed the impugned order which has been affirmed by the Revisional Court in the revision.

3. The issue which is to be given consideration is whether the Revisional Court erred in passing the impugned order despite pendency of civil suit and a private complaint on the same subject matter. Learned Sessions Judge has noted the fact that prior to this, order passed under Section 146 of Cr.P.C. on 18.2.2010 was subject matter of revision case No.19/2010 which was dismissed vide order dated 15.3.10 and against this order M.Cr.C.No.1805/2010 was filed before the High Court wherein vide order dated 8.2.2012 the order passed in revision was maintained by the High Court and further directions were issued to the subordinate Court to decide the proceeding under Section 145 of Cr.P.C. within a period of two months. It is also mentioned that a Misc. Appeal No.423/2012 was filed in which vide order dated 20th June, 2013 subordinate Court was directed to continue the proceedings under Section 145 of Cr.P.C.

4. Learned trial Court has noted that in the case of Raghunath Singh v. Pragobai & Anr. as reported in ILR (2012) MP 2285 it has already been decided by this Court that the proceedings under Section 145 of Cr.P.C. initiated during pendency of the civil suit is not without jurisdiction. It has been held that final order under Section 145 of Cr.P.C. is however subject to the result of the litigation in the civil Court. It is an order of interim nature and comes to an end the moment the right, title and interest of the parties are declared by a Court of competent jurisdiction.

5. Notwithstanding the fact that there is no bar on undertaking the proceedings under Section 145 of Cr.P.C. during the pendency of the civil suit, the issue in hand is that proviso below Section 145(4) of Cr.P.C. empowers a Magistrate to put in possession the person who has been forcefully and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, but the fact remains that there was an interim order in favour of the present petitioners from the Court of 3rd Additional District Judge, Shivpuri, in case No.4-A/2012 whereby an application under Order 39, Rule 1 and 2 CPC has been allowed and defendants were directed not to interfere in the possession of the plaintiffs during the pendency of the suit. Therefore, the order of the civil Court passed

while deciding the application under Order 39, Rule 1 and 2 was binding in nature on the Executive Magistrate and the Executive Magistrate could not have ignored that order. In fact, the Magistrate is required to give effect to the decision of the civil Court regarding possession of the disputed property. Thus, in view of the aforesaid, Court below has erred in overlooking the fact that Executive Magistrate could not have superseded the decision of the civil Court regarding maintenance of possession. If the impugned orders are allowed to stand, then it will amount to give overreaching power to the Executive Magistrate to supersede the order of the competent civil Court in the name of proceeding under Section 145 of Cr.P.C. Thus, petition succeeds and is allowed. Impugned orders are quashed.