
(1998) 09 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2900 of 1998 in Crl. Rev. No. 583 of 1995

Niranjan Singh

APPELLANT

Vs

Smadh Bawa Prem Dass

RESPONDENT

Date of Decision : 22-09-1998

Acts Referred:

Citation : (1999) 1 AICLR 532 : (1999) 1 RCR(Criminal) 95

Hon'ble Judges : R.L.Anand, J

Advocate : Ravinder Chopra, A.S. Kalra, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Heard. Smadh Bawa Prem Dass under the management of Shri Sadhu Ram filed a petition under Section 133 Cr.P.C. before the Court of Sub Divisional Magistrate, Bathinda with a prayer that respondents Niranjan Singh and Boota Singh shall be restrained from constructing any tubewell in khasra No. 524/2 which is being used as a pahi and that with the installation of the tubewell a public path has been obstructed and blocked by Niranjan Singh and Boota Singh. The learned Sub Divisional Magistrate vide order dated 9.3.1994 dismissed that application on the ground by making the following observations :

"After hearing the arguments of the learned counsel and after perusing the record, I have found that the matter in issue is already pending in the civil court and the Naib Tehsildar, Bathinda has already been appointed as a Local Commissioner by the civil Court. It would not be proper to initiate the present proceedings as the same matter is pending in the civil court. Under these circumstances the present application is rejected."

Aggrieved by the said order, Samadh Bawa Prem Dass filed revision in the court of Addl. Sessions Judge, Bathinda, who allowed the revision and set aside the order of the learned Sub Divisional Magistrate on the ground that the parties had not been given the opportunity to lead evidence in support of their case. Aggrieved by the said order dated 13.7.1975 passed by Addl. Sessions Judge,

Bathinda, respondents Niranjan Singh and Boota Singh filed the revision in the Hon"ble High Court.

2. A perusal of the record of High Court would show that on 20.5.1997 Shri Ravinder Chopra gave the appearance on behalf of the petitioners while Sh. A.S. Kalra gave the appearance on behalf of the respondent and the case was adjourned to 14.7.1997 and was disposed of by Hon"ble Mr. Justice M.L. Koul in the presence of Shri Ravinder Chopra, Advocate. The order dated 14.7.1997 indicates that Shri A.S. Kalra, the learned counsel appearing on behalf of the respondent, was not present. The order dated 14.7.1997 further shows that a submission was raised by Shri Chopra before Justice Koul that civil proceedings are pending before the Civil Court over the same subjectmatter in dispute and in these circumstances the filing of the application under Section 133 Cr.P.C. by the respondent was uncalled for and unjustified. This contention of Shri Chopra prevailed upon Hon"ble Mr. Justice M.L. Koul, who was pleased to allow the revision petition and set aside the order of the learned Addl. Sessions Judge and dismissed the application.

3. The client of Shri A.S. Kalra has filed this Criminal Misc. seeking for the recalling of the order dated 14.7.1997 on the two grounds. Firstly, that the respondent was not heard on 14.7.1997 and secondly that the order has been passed by Justice Koul on factually incorrect grounds. During the course of submissions Shri Kalra submitted before me that on 14.7.1997 no civil suit was pending between the parties. Rather the civil suit filed by the respondent was dismissed as withdrawn on 13.10.1995 on the assurance given by the petitioners that they will not dig the tubewell on the disputed site, except in due course of law. The request of Shri Kalra has been opposed by Shri Chopra firstly on the legal ground that the order of Justice Koul cannot be recalled because with the passing of the said order the Court has become functus officio. In support of his contention, he relied upon Ajay Bansal and others v. State of Haryana and another, 1998(2) RCC 536.

4. So far as the legal proposition set forth by the learned counsel for the petitioner is concerned, there is no dispute, but the judgment relied upon by the learned counsel for the petitioners may not be strictly helpful to him. Firstly, the order dated 14.7.1997 has been passed by Hon"ble Mr. Justice M.L. Koul at the back of the respondent and no opportunity has been granted to the respondent to address arguments in spite of the fact that Shri Kalra gave appearance on 20.5.1997. It has also been pointed out by Shri Kalra that the causelist prepared by the High Court on 14.7.1997 does not disclose his name. In this view of the matter the rights of the parties cannot be allowed to be defeated if there is some mistake on the part of the Court or the Registry. A litigant is not supposed to suffer for the lapse of the Court or the Registry, if any. Secondly if the order of Justice Koul has proceeded on factually incorrect premises, there is no harm to recall that order in order to impart justice to the parties. It is conceded that as on 14.7.1997 no civil suit was pending before the Civil Court entertaining the

controversy in dispute. In these circumstances firstly I recall the order dated 14.7.1997 and decide to hear the parties forthwith on merits.

5. The order of the learned Addl. Sessions Judge would show that he has simply given an opportunity to the parties to lead evidence in support of their claim before the S.D.M. as the S.D.M. simply decided to dismiss the application on the short ground that the matter is sub judice with the civil Court. He has not held any inquiry as mandatory under Section 133 Cr.P.C. He was supposed to take evidence as to whether there is any obstruction over the public path or nor. As he has not complied with the statutory procedure, therefore, the order of the S.D.M. was rightly set aside by the learned Addl. Sessions Judge. Even now Shri Chopra has not been able to show that even as today any civil suit is pending between the parties. In fact, the civil suit between the parties had already been disposed of on 30.10.1995.

6. Resultantly, I maintain the order of the learned Addl. Sessions Judge, Bathinda and give directions to S.D.M. Bathinda to restore the proceedings under Section 133 Cr.P.C. and give proper opportunity to both the parties to lead their evidence. The parties shall conclude their evidence within three months from the receipt of the copy of this order and the learned S.D.M. shall forthwith decide the application according to law and on merits under Section 133 Cr.P.C.

7. The parties through their counsel are directed to appear before the learned Sub Divisional Magistrate, Bathinda on 9.10.1998.

JUDGMENT accordingly.