

(2005) 08 AHC CK 0058

In the Allahabad High Court

Case No : Criminal Misc. Application No. 6636 of 2005

Phool Mohammad

APPELLANT

Vs

State of U.P., Kamlesh Mishra, Altaf Hussain and Asidullah

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 482

Citation : (2005) 08 AHC CK 0058

Hon'ble Judges : G.P. Srivastava, J

Bench : Single Bench

Advocate : Murlidhar, J.P. Singh and R.P. Singh, for the Appellant; K.N. Mishra and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

G.P. Srivastava, J.—This is application u/s 482 Cr.P.C. to quash the orders dated 29.3.05 passed by Sub Divisional Magistrate, Bhatpar Rani district Deona under Sections 146(1) Cr.P.C. and 145(1) Cr.P.C: in case No. 34 of 2005 and for direction for releasing the attached property in favour of the applicant Phool Mohammad.

2. The brief facts giving rise to this application is that on the basis of police report dated 21.3.05 submitted by police station Bankata u/s 145 Cr.P.C alleging that the applicant Phool Mohammad was running a brick kiln at the land of Kamlesh Misra but Kamlesh Misra under a lease was complaining that he could not get his money. The money of one Altaf Hussain was also allegedly invested in the said brick kiln as alleged by Altaf One Asidullah has also alleged that he invested Rs. 10 lacs. All the four persons were quarreling and wanted to take possession over the brick kiln running on the plot No 1474 owned by Kamlesh Misra. On the basis of the said Chalani report a notice u/s 145(1) Cr.P.C. was issued on 29.3.05 against the aforesaid four persons, applicant Phool Mohammad and opposite parties No. 2 to 4, Kamlesh Misra, Altaf Hussain and Asidullah The learned Sub Divisional Magistrate simultaneously issued attachment order u/s

146(1) Cr.P.C. The disputed land was given in the Supurdagi of one Sasunpati on 6 4.05.

3. The applicant has alleged that suit No. 2309 of 2002 Bali Ram alias Kamlesh v. Vipin Misra and others was filed in the court of Addl. Civil Judge (J.D.), Court No. 10, Dcoria on 28.10.2002 in respect of the said land. An exparte injunction was granted on the same day restraining the defendant from interfering in the possession of the plaintiff over the disputed land. The defendant moved an application to recall the exparte injunction order which was allowed on 1.3.05 and the exparte injunction order was recalled.

4. The opposite party No 2 Kamlesh Misra in his counter affidavit has alleged that no patta was executed by him and his brother Vijai Kumar in favour of the applicant. The impugned order is an interlocutory order and the present application is not maintainable. The pendency of the civil case has not been disputed.

5. I have heard learned counsel for the parties and gone through the record of the case.

6. The only question involved in this proceeding is whether the proceeding u/s 145 Cr.P.C in respect of the same land is maintainable when a civil suit in respect of the same property is pending in between the parties. In this connection reliance has been placed on Ram Sumer Puri Mahant Vs. State of U.P. and Others, in which the Apex Court has held that when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding u/s 145 of the Code, would not be justified. The parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Decision of Allahabad High Court, Reversed.

7. The only distinguishing feature of the present case that the case before the Apex Court the civil proceedings had already been adjudicated, but it was observed in the case referred above that multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.

8. It appears from the admitted fact that when the exparte injunction was vacated in the civil suit this proceeding u/s 145 Cr.P.C. was initiated to overcome the effect of the said civil case.

9. It has also been held in Jhummal alias Devandas Vs. State of Madhya

Pradesh and Others, that It is true that in cases of dispute regarding immovable property a party should not be permitted to litigate before the criminal court When the civil suit is pending in respect of the same subject matter. That does not however mean that a concluded order under S. 145 Cr.P.C. made by the Magistrate of competent jurisdiction should be set at naught merely because the unsuccessful party has approached the civil court An order made under S. 145 Cr.P.C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil Court The unsuccessful party therefore must get relief only in the civil Court He may move the civil Court with properly constituted suit He may file a suit for declaration and prove a better right to possession. The civil , Court has jurisdiction to give a finding different from that which the Magistrate has reached".

10. In view of the above pronouncement of the Apex Court it was not open for the learned Magistrate to initiate a proceeding u/s 145, Cr.P.C. when the matter was already subjudice in a competent civil court.

11. As regards the maintainability of the application is concerned the notice and the order in dispute are without jurisdiction and materially effect the right of the applicant.

12. In view of the above discussions the applicant has been able to make out a good case for interference u/s 482 Cr. P.C.

13. In the result the application is allowed and the impugned order dated 29.3.05 passed by Sub Divisional Magistrate u/s 146(1) Cr. P.C. and 145(1) Cr.P.C in case No 34 of 2005 are hereby quashed. The attached property be released in favour of the applicant Phool Mohammad.