
(2015) 04 GAU CK 0074
In the Gauhati High Court
Case No : Criminal P. No. 4 of 2014

R. Thankhuma and Others	Vs	APPELLANT
Lalchhuanliana and Others		RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 145(1), 146, 146(1)

Citation : (2015) 2 GLD 652

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Advocate : F. Lalengliana, for the Appellant; R. Lalmuanpuia, for the Respondent

Final Decision : Dismissed

Judgement

Michael Zothankhuma, J.—Heard Mr. Lalsawirema, learned counsel appearing for the petitioners. Also heard Mr. F. Lalengliana, learned counsel for the respondents. This criminal petition has been filed under Section 482 , Cr.P.C. challenging the legality of the order dated 18.11.2014 passed by the District & Sessions Judge, Aizawl in Criminal Revision No. 68 of 2014.

2. The case of the petitioners is that there was a clash among members and officers of the Dinthar Corps, Salvation Army, Aizawl on 4.10.2014. Pursuant to the said clash, there were complaints made by both sections of Dinthar Corps Salvation Army to the District Magistrate. In pursuant to the said complaint, the District Magistrate had put the Church building under lock and key. Besides putting the Church building under lock and key, the District Magistrate had vide order dated 9.10.2014 under Sections 144 /146(2)(1) , Cr.P.C. ordered the respondents to vacate their quarters before 18.10.2014. Subsequently, the District Magistrate issued another order dated 17.10.2014 under Sections 144 /146(2)(1) , Cr.P.C. directing the O/C. Vaikakawn PS to lock the residential quarter of the respondents and to be the custodian of the property.

3. Being aggrieved with the orders dated 9.10.2014 and 17.10.2014 passed by

the District Magistrate, the respondents had preferred a revision petition before the District & Sessions Judge, Aizawl vide Criminal Revision No. 68/2014. The District & Sessions Judge, Aizawl after giving opportunity of hearing to both the parties had disposed of the Criminal Revision No. 68/2014 vide order dated 18.11.2014 as per the following:

"In light of the above discussions and submissions of the learned counsels, the impugned orders (i) Order No. J. 11011/33/2014-DC(A)/11, dated 9.10.2014 & (ii) Order No. J. 11011/33/2014-DC(A)/11-Part, dated 17.10.2014 were passed mechanically without application of judicial mind prerequisite while dealing with matters of judicial nature and are therefore hereby quashed and set aside. The application of the revision petitioners is allowed. The six named tenants of the Salvation Army, Dinthar Corps, Aizawl shall continue to be in possession and occupation of the said premises. However, it is felt that in the interest of all concerned, the Salvation Army may take necessary administrative course of action, as deemed fit and proper, following the rule of law regarding the postings of its Officers and in respect of the tenants, within the premises of Salvation Army, Dinthar Corps, Aizawl, thereof at the earliest possible date. The revision petition is therefore allowed in terms of the order above. The impugned (1) Order No. J. 11011/33/2014-DC(A)/11, dated 9.10.2014 & (ii) Order No. J. 11011/33/2014-DC(A)/11-Part, dated 17.10.2014 are hereby quashed and set aside."

4. The petitioners counsel has submitted that the District Magistrate had not followed the provision of Section 146 , Cr.P.C. strictly before issuing the orders dated 9.10.2014 and 17.10.2014. He has however submitted that the impugned order passed by the District & Sessions Judge dated 18.11.2014 in Criminal Revision No. 68/2014 has gone beyond its jurisdiction inasmuch as he has given possession of the said residential quarters to the respondents which cannot be allowed.

5. Mr. Lalsawirema, learned counsel for the petitioners has also submitted that the orders dated 9.10.2014 and 17.10.2014 passed by the District Magistrate has spent its force after expiry of 2 (two) months and has ceased to become operative w.e.f. 14.12.2014.

6. Mr. F. Lalengliana, learned counsel for the respondents has submitted that the District Magistrate orders dated 9.10.2014 and 17.10.2014 having been passed without following the provision of Section 146 , Cr.P.C. is non est. He has also submitted that the respondents have been in continuous possession of the said residential quarters even before the order passed by the District Magistrate and even till today.

7. He has also submitted that the validity of the orders passed by the District Magistrate having spent its force as on December, 2014, the said orders are no longer in operation and cannot be acted upon. He has also submitted that the respondents did not file any complaint before the District Magistrate with regard

to the disturbance of the Dinthar Corps of the Salvation Army and the orders of the District Magistrate had been issued on the basis of the complaint filed by the petitioners without hearing them. He has submitted that the District Magistrate should have complied with provision of Section 145 , Cr.P.C. prior to the issuance of the order under Sections 144 /146(2)(1) , Cr.P.C.

8. The counsel for the petitioners has also submitted that Sections 144 and 146 , Cr.P.C. are provisions which authorize the District Magistrate to prevent or to provide speedy remedy against breach of peace arising out of dispute relating to immoveable property and under these provisions right to possession cannot be granted by the Criminal Court where the subject-matter is in dispute.

9. The counsel for the petitioners has relied upon the case of Ranbir Singh Vs. Dalbir Singh and Others, , wherein it has been held that--

"The Court, while dealing with a proceeding under Section 145 , Cr.P.C., is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) , Cr.P.C. and sustainability of the order of attachment passed under Section 146(1) , Cr.P.C. For deciding the questions it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property."

10. The counsel for the petitioners has submitted that the Criminal Court/ Sessions Judge cannot decide the question of title to the property as reported in Amresh Tiwari Vs. Lalta Prasad Dubey and Another, . He has submitted that the District & Sessions Judge has decided the title to the property in question. The relevant portion of paragraph 14 of Amresh Tiwari (supra) is reproduced below:

"14. Reliance has been placed on the case of Jhummal v. State of M.P. It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 of the Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An order of status quo had already been passed by the competent civil Court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section

145 . In our view on the facts of the present case the ratio laid down in Ram Sumer case fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where relief"s regarding protection of the properly concerned can be applied for and granted by the civil Court that proceedings under Section 145 should not be allowed to continue. This is because the civil Court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate."

11. The petitioners counsel has also submitted that the District Magistrate has committed error in giving possession of the property to the respondents and accordingly prayed for setting aside the impugned order dated 18.11.2014 passed by the District & Sessions Judge, Aizawl in Criminal Revision No. 68/2014.

12. After hearing the learned counsels at length, I find that the issue involved in the present case is not with regard to title of the property. The order made under Sections 144 and 146 , Cr.P.C. is not related to title of the property in any manner whatsoever.

13. The question of title can also not be decided by the District Magistrate under the Cr.P.C. in a criminal matter. In that view of the matter, this Court is not going into the question of title. It is only going into the question of validity of the orders passed by the District Magistrate and the District & Sessions Judge in Criminal Revision No. 68/2014.

14. A mere perusal of the order dated 9.10.2014 issued by the District Magistrate under Sections 144 and 146(2)(1) , Cr.P.C. would go to show that the District Magistrate has not fulfilled the requirement of the provision of Section 145 of Cr.P.C. It has been held by various High Courts and the Supreme Court of India that a Magistrate is only entitled to make a restrictive order preventing a person from doing an act under Section 144 , Cr.P.C. He cannot make a mandatory order directing a person to do some act. The words "abstains from a certain act" do not empower a Magistrate to make a positive order requiring a person to do a particular thing, neither can a Magistrate in the garb of a negative order asked the person to do a certain thing. Keeping in view the provision of Section 144 , Cr.P.C., the District Magistrate could not have issued an order directing the respondents to vacate their quarters on matters relating to breach of peace as there was no finding by him that the respondents were responsible for breach of peace. The question of issuance of a positive direction should be made keeping in mind the facts and circumstances of each case. For example, in respect of flood or natural calamities that are likely to happen. However, the present case is not of a nature regarding natural calamities or other instances under which the respondents were to be shifted elsewhere for their safety.

15. In the order dated 9.10.2014 passed by the District Magistrate, he has directed the respondents to vacate their respective quarters before 18.10.2014

basing his decision on a law and order problem. This clearly goes to show that on the date he made the order dated 9.10.2014, the respondents were in possession of the said quarters. The functioning of the State administration is to maintain law and order. Maintenance of law and order cannot be stretched so far as to direct the petitioners under Section 144 , Cr.P.C. to vacate their premises on the ground that some persons are going to endanger the safety of the respondents. In fact, the District Magistrate should have instead protected or taken precaution to restrain any person from disturbing the respondents from the possession of their respective quarters and also given them protection. As stated earlier, this case is not with regard to title but only with regard to possession. The District Magistrate having clearly come to a finding that the respondents were in possession of the quarters as on 9.10.2014, the order directing them to vacate the same is illegal and cannot be allowed under Section 144 , Cr.P.C. The provisions of Section 145 , Cr.P.C., which relates to disputes as to immovable property has also not been complied with. The extract of the order dated 18.11.2014 passed by the Sessions Judge in Crl. Rev. No. 68 of 2014 is reproduced below:--

"The second question for determination of whether the impugned was passed in the conformity with the provisions of Cr.P.C. is to be answered in the negative since no records of proceedings of the District Magistrate are made available before this Court despite calling for such records or proceedings. It is already stated at the outset that the records/proceedings were called for and only copies of the impugned orders were furnished and it is therefore presumed that there were no proceedings drawn before issue of orders under Section 146 , Cr.P.C., which is to be made only after the provisions of Sections 145 & 147 , Cr.P.C."

16. The respondents having challenged the orders of the District Magistrate in the Court of the District & Sessions Judge, the District & Sessions Judge, Aizawl had while setting aside the orders of the District Magistrate allowed the respondents to continue to be in a possession and occupation of the said quarters vide order dated 18.11.2014.

17. In Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Others, , it has been held by the Supreme Court that an order of District Magistrate is an executive order open to judicial review and it has also been held by this Court in Premoda Medhi and Another Vs. Gauhati Roller Flour Mills Ltd. and Another, , that while passing an order under Sections 144 and 146 of Cr.P.C., the District Magistrate before passing order under the aforesaid sections has to record its satisfaction. This, however, has not been done in the present orders passed by the District Magistrate.

The Sessions Court has not decided the question of possession or title in the present case. The orders dated 9.10.2014 and 17.10.2014 passed by the District Magistrate having clearly shown that the possession of the quarters was with the respondents, there can be no dispute regarding possession of the quarters by the respondents. The question of title has not been decided by the Sessions Court as

well. The fact situation in Ranbir Singh (supra) and Amesh Tiwari (supra) is different as there is a dispute regarding possession in the above case, while that question is not a subject-matter in issue in this case. As such, the above two case laws are not applicable to the petitioners' case. In fact, the above two decisions are against the petitioners as the possession of the quarters is undisputedly with the respondents.

18. In view of the discussions made above, I find that the orders dated 9.10.2014 and 17.10.2014 cannot withstand the scrutiny of law and accordingly the order of the District & Sessions Judge dated 18.11.2014 passed in Criminal Revision No. 68/2014 setting aside the orders of the District Magistrate is hereby affirmed as the Sessions Court has got the power under Sections 397 and 399 , Cr.P.C. to review the executive orders of the District Magistrate.

19. This Court also finds that the orders dated 9.10.2014 and 17.10.2014 could not have been passed in the facts and circumstances of this case.

20. In view of the further fact that the orders dated 9.10.2014 and 17.10.2014 passed by the District Magistrate have spent its force in December, 2014, the present case is infructuous. Accordingly, the Criminal Petition is dismissed as being infructuous.