

(1993) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Criminal Reference No. 60/1987

Raja

APPELLANT

Vs

Safdar Khan & Ors.

RESPONDENT

Date of Decision : 30-06-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1995) JKLR 707 : (1994) 1 SriLJ 172

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Judgement

1. This criminal reference has been made on revision petition filed before the learned sessions Judge, Pulwama arising on revision petition No:9 of

1987 on 31,10.1987 who has recommended for the quashment of the impugned order passed by Learned Chief Judicial Magistrate Shopian in

proceedings under Section 145 Cr. P.C,

2. The parties were summoned, but despite service first they appeared and subsequently absented and then the matter came up for consideration

and hearing, nobody appeared so the petition was somoto examined and perused by roe and on examination I find that the proceedings initiated by

learned JM Pislwama with respect to land measuring 8 Kanais under Khasra No: 504/152 situated at Kerawa Manloo tehsil Shopian on an

application transferred to him by Ld. CJM Shopian and the Learned Magistrate, has initiated the proceedings under section 145(1) and 145 (4) of

Cr.P.C. Subsequently objections have been filed and She matter was transferred for consideration and disposal to the learned CJM Shopian on an

application for transfer moved before District & Session Judge, Pulwama and the file was transferred to the learned CJM Shopian for disposal

under law per orders dated 7.5.1987, The file having come to before learned CJM Shopian who after hearing she parties passed the order dated

23.6.1987 which is impugned in the present criminal reference.

3. The learned Magistrate has returned a finding that as because there are several cases pending between the parties to the dispute regarding same

subject matter and one party contends that the disputed land is an orchard and is in their possession and the other contends that the disputed land

is an agricultural land and is also depicted by the revenue records on this score, so the initiation of proceedings under section 145 Cr.P.C. is

abinitio bad as because it is the Executive Magistrate only who had.

4. The learned Magistrate after having heard the Parties and also considering law which was cited by the parties at the bar had dropped the

proceedings by the impugned order observing that the disputed land falling under survey No: 504/152 measuring 8 Kanals is Maidani and is being

used for growing maize crops, as per the revenue records revealed to him by the Civil File titled Mst. Raja versus Lal Hussain pending between the

parties in the court. In fact an order of maintaining statusquo has already been passed by the Civil court on the fateful date after hearing the parties

and that order has also been made absolute in the civil suit on that very date when these proceedings had been dropped. He has also pointed out

that there is another suit pending between the parties on the same subject matter which is titled Begum Jan versus Mohd. Sultan. The said suit is

pending in the court of SubJudge Shopian and in the said suit, as per perusal of the file and objections placed on record filed by the

respondents/nonapplicants, the court on 12.3.1987 has passed the following order

Application is supported by an affidavit Revenue record is also on the file. Issue notice to the other side. Meanwhile, nonapplicants shall not

interfere with the possession of the applicant till further order subject to objections of the other side. Put up on 26.3.1987.

Thus it has been brought on record that a temporary injunction has been passed in favour of Begum Jan, one of the claimants to the suit against

Mohd. Sultan and others who are causing interference in her peaceful possession and this fact has been lost sight of by learned Session Judge while

making the criminal reference.

5. Ld. Session Judge in the criminal reference under consideration has relied and acceded to the arguments projected before him by saying that in a case where civil suit is pending between the parties to the disputed land and the parties there to had been ordered to maintain statusquo with regard to the disputed land and no temporary injunction order had been passed in favour of any of the parties to the lis, on that count he has held that the trial Magistrate was not right in dropping the proceedings solely on the ground that statusquo order has been issued by the Civil court in a civil suit with respect to the disputed land, and as such has held that the impugned order is not in accordance with law and has made the present criminal reference.

6. In light of the above observations that there are two civil suits pending between the parties and in one of the suits, status quo order has been ordered to be maintained and in the other temporary injunction has been issued by the Civil court against nonapplicants not to interfere in their possession. So the fact boils down that when civil proceedings are pending between the parties over the subject matter i.e. the land in dispute and wherein temporary injunction has also been passed in favour of one of the claimants and against the other, the learned Magistrate was and is within his competence to order dropping of proceedings initiated under section 145(1) and 145(4) Cr.P.C. There is no illegality or irregularity committed by the learned CJM while dropping the proceedings initiated by learned Judicial Magistrate Pulwama.

7. For the fore going reasons, the criminal reference made by learned Session Judge being misconceived, is accordingly rejected. The records be sent back to the trial court. The petition Is disposed of accordingly.