

(2007) 12 P&H CK 0054
In the Punjab And Haryana At Chandigarh

Rajesh lamba and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 146, 151

Citation : (2007) 12 P&H CK 0054

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—This case has a checkered history. The dispute between the parties over a property initially reached this Court, when an FIRNo. 208 dated 26.7.2006 was challenged by the petitioners on the ground that the allegations of tress-pass etc. could not be made against them, they being owners in possession of the property in dispute. Subsequently, two more FIRs were registered at the instance of the respondents under the same Sections and virtually with the same allegations. Finding that the police apparently was acting to favour the respondents, the proceedings in all the FIRs were stayed as the issue in regard to ownership and possession of this property had also been agitated in a civil proceedings by filing a civil suit. It is thereafter that the respondents adopted yet another mode and initiated proceedings under Sections 145 and 146 Cr.P.C. before Sub Divisional Magistrate, Hansi. Apprehending breach of peace, the S.D.M. ordered attachment of the property u/s 146(1) Cr.P.C. and appointed Tehsildar, Hansi, as a Receiver. This order of Sub Divisional Magistrate was challenged before this Court through Criminal Misc. No. 81057 M of 2006. Petitioner, Rajesh Lamba filed yet another Criminal Misc. PetitionNo. 4072 M of 2007 for registering a case against the respondents with the allegations that they were using Gundas to threat and dis-possess him and other family members from the land, which was subject matter of dispute. All the petitions were combined together for hearing. The counsel first made submission in petitionNo. 81057 M of 2007, where proceedings under Sections 145, 146 Cr.P.C. were under challenge.

2. The primary submission made on behalf of the petitioners was that the proceedings under Sections 145 and 146 Cr.P.C. could not be continued once the matter was taken to or was pending in the civil Court. It was further contended that the allegations made in the FIRs would basically dependent upon the outcome of the civil proceedings. Allegation was that the petitioners had tress-passed into the land owned and possessed by the respondents. Obviously, if civil Court was to decide that the land was in possession or in the ownership of the petitioners, then these allegations of tress-pass would fail. During the course of proceedings being held by the Sub Divisional Magistrate under Sections 145 and 146 Cr.P.C., possession of either side could not be clearly established and as such, a Tehsildar was appointed as a Receiver. Apprehending serious breach of peace, an interim arrangement, as ordered by the Sub Divisional Magistrate, was directed to be continued. All the petitions, challenging the FIRs or the proceedings under Sections 145 and 146 Cr.P.C., were admitted. Further proceedings under all these cases were stayed except the civil suit. It was viewed by this Court that any observation made would prejudice the case of either side and as such, the interim arrangement be continued and the case in regard to possession or ownership of the property be decided by the civil Court. Directions were accordingly issued to the civil Court to decide the same within a period six months. All the petitions, challenging the FIRs as well as proceedings under Sections 145 and 146 Cr.P.C. were ordered to be admitted on March 8, 2007. The reasons to adopt this procedure can be noticed from the observations of this Court in the order dated March 8, 2007, which are as under:

If the prosecution of the petitioners is permitted at this stage, it was bound to prejudice them and it could be construed that they were not in possession and as such, could be blamed for tress-passing even if they were the owners. It was accordingly put to the counsel for the parties that in fairness, further proceedings in all the petitions, criminal as well as civil should await the outcome of the civil suit which is in progress in regard to possession of this land. If the Civil Court ultimately finds that the petitioners are in possession, it may not be possible to prosecute them in the FIRs impugned in this petition. On the other hand, if Civil Court was to return the finding that the petitioners were not in possession, then they would be liable for being proceeded against for the offence of tress-pass. The counsel for the parties could not offer any objection to the proposed course that proceedings in all the petitions should await the outcome of the civil suits.

3. During the pendency of these proceedings, status-quo in regard to possession of the land in dispute was also ordered to be maintained.

4. The petitioners have now filed Criminal Misc. No. 89754 of 2007, disclosing that civil suit titled `Rajesh Lamba v. Surajbhan and Anr. which was being tried, has been decided in favour of the petitioners holding that they are owners in possession of the suit land and injunction has been granted in their favour. Not only that, the civil suit filed by the respondents titled Pardeep Kumar Chaudhary and Ors. v. Rakesh and Ors. stands dismissed being barred by the provisions of

Benami Act. The copies of these two judgments are now annexed with this miscellaneous petition as Annexures P-19 and P-20. It is, thus, prayed that all the petitions now pending before this Court and which have been admitted be decided in terms of the judgment rendered by the civil Court.

5. Notice of this application was given to the counsel appearing for the respondents in this case. The counsel representing both sides have not disputed before me that the civil suits, as referred to above, have been decided and Annexures P-19 and P-20 are the copies of the orders passed by the civil Court. Counsel for the respondents have no objection for taking these documents on record. This prayer accordingly is allowed and Annexures P-19 and P-20 are taken on record.

6. Mr. Bedi, learned Counsel representing the petitioners, by referring to the order passed by this Court dated March 8, 2007, vide which various Miscellaneous Petitions were admitted, would say that now all these petitions are required to be disposed of, as was agreed to between the parties. He would further contend that the proceedings under Sections 145 and 146 Cr.P.C. can not now be continued in view of the decision in the civil proceedings and these have to come to an end. In support of his submission, the counsel has placed strong reliance on the judgment of the Hon'ble Supreme Court in the case of Dharampal and others Vs. Smt. Ramshri and others, . Referring to the observations of the Hon'ble Supreme Court, the counsel would point out that even where an interim order or an order appointing Receiver is made by a civil Court, then the Magistrate is required to withdraw the attachment order, the matter being seized by the civil Court. The counsel has also referred to number of judgments of the Hon'ble Supreme Court and High Courts, including this Court, to urge that the decision of the criminal Court is not binding on the civil Court while the decision of civil Court binds the criminal Court. It is accordingly urged that the proceedings that are in progress under Sections 145 and 146 Cr.P.C. now can not continue in view of the authoritative determination of the controversy by the civil Court.

7. Mr.K.S.Nalwa, learned Counsel appearing for respondent No. 4, would not seriously contest this proposition but would say that the judgments rendered by the civil Court have been taken in appeals and as such, the present arrangement should continue during the pendency of those appeals. Sh.Parveen Hans, representing respondentNo. 3, however, would join issue with counsel for the petitioners and would say that determination by the civil Court would not make any difference as the proceedings under Sections 145 and 146 Cr.P.C. are basically to ensure maintenance of peace etc. and hence, these can not be ordered to be quashed as prayed by the petitioners. In support of his submission, he has referred to the Supreme Court judgment in the case of Prakash Chand Sachdeva Vs. The State and another, and two judgments of this Court titled Ujagar Singh v. Sub Divisional Magistrate Malerkotla 1994 (1) RCR (Criminal) 393 and Karnail Singh v. State of Punjab 1995 (1) RCR (Criminal) 659.

8. I have considered the rival contentions raised before me. The matter relating to continuation of proceedings under Sections 145 and 146 Cr.P.C., upon determination of dispute by civil Court is well regulated by the contents of Section 146 Cr.P.C. itself. It reads as under:

146. Power to attach subject of dispute and to appoint receiver-(1) If the Magistrate at any time after making the order under Sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof: Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908): Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate (a) Shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him (b) may make such other incidental or consequential orders as may be just.

9. Section 146(1) Cr.P.C. clearly provides that the Magistrate may attach the property, subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. Obviously, the proceedings u/s 145 Cr.P.C., as such, have to be until a competent Court has determined the rights of the parties.

10. The Hon'ble Supreme Court in Dharampal's case (supra), has even interpreted the word determination u/s 146 Cr.P.C. to say that it need not be a final determination of the rights of the parties by the Civil Court. The Hon'ble Supreme Court has gone to the extent of holding that even final determination of the rights of the parties by the civil Court is not an essential condition for cessation of the attachment order and its consequent withdrawal. As held, the determination may be even of tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a Receiver in respect of the subject-matter of the dispute pending the final decision in the suit. It is viewed that moment the competent court does so, even at the interim stage, the order of attachment passed by they Magistrate has to come to an end. The relevant observations in this regard are as under:

It is obvious from Sub-section (1) of Section 146, that the Magistrate is given power to attach the subject of dispute until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. The determination by a competent court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent court passes an order of interim injunction or appoints a receiver in respect of the subject- matter of the dispute pending the final decision in the suit. The moment the competent court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency between the order passed by the civil Court and the order of attachment passed by the Magistrate. The proviso to Sub-section (1) of Section 146 itself takes cognizance of such a situation when it states that Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of any breach of peace with regard to the subject of dispute. When a civil court passes an order of injunction or receiver, it is the civil court which is seized of the matter and any breach of its order can be punished by it according to law. Hence, on the passing of the interlocutory order by the civil court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute.

11. Mr.Bedi would further contend that once a civil Court has passed an order, even of status-quo, then the Magistrate can not start proceedings under Sections 145 and 146 Cr.P.C. even if there be an apprehension of breach of peace. In such eventuality, Magistrate could initiate proceedings u/s 107/151 Cr.P.C. as no parallel proceedings can be initiated by the police and the Magistrate, when such dispute is already pending before a civil Court. In support of this, learned Counsel has referred to *Sarwan Singh v. Sub Divisional Magistrate Ferozepur* 1997 (3) R.C.R. 279 He would also refer to the case of *Ram Niwas and Ors. v. The State of Haryana and ors.* 1992 (1) RCR 624.

12. In fact, the Hon"ble Supreme Court in the case of *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, has held that when civil litigation is pending for property, wherein the question of possession is involved and has been adjudicated, initiation of parallel criminal proceedings u/s 145 and 146 of the Code would not be justified. It has also been observed in this case that multiplicity of litigation is not in the interest of parties nor should public time be allowed to be wasted over meaningless litigation. The order of the Magistrate was accordingly quashed on the ground that parallel proceedings should not continue. It is also observed by the Hon"ble Supreme Court in *Ram Sumer Puri Mahant* (supra) that there is no scope to doubt or dispute the position that the decree of a civil Court is binding on a criminal Court in the matter like the one which was before the Supreme Court. Accordingly, it was viewed that the criminal Court should not be allowed to invoke its jurisdiction particularly when the decision was being examined by the civil Court and the parties were in a position to approach the civil Court for an interim order such as injunction or

appointment of a Receiver for adequate protection of the property during the pendency of the dispute.

13. Seen in the above noted background, it can be said that the judgment relied upon by counsel for respondent No. 4 would be of no avail to him. No doubt, in the case of Parkash Chand Sachdeva (supra), the Hon'ble Supreme Court observed that the proceedings u/s 145 and 146 Cr.P.C. can not be dropped on the ground of pendency of a civil suit, but this was a case where ownership of the property was not in dispute. The parties were father and a son, who were the co-owners where no partition had taken place. The observations in this case were that the proceedings u/s 145 Cr.P.C. can not be dropped merely because of pendency of a civil suit. Such a situation does not arise in the present case. In Dharampal's case (supra), the Hon'ble Supreme Court has held that even an interim determination would lead to dropping of the proceedings under Sections 145 and 146 Cr.P.C. Prakash Chand Sachdeva's case (supra) apparently is dealing with a situation where civil Court is yet to determine either finally or as an interim measure the rights of the parties. In this context, it has been held that proceedings u/s 145 Cr.P.C. can not be dropped on the ground of pendency of civil suit. In fact, Ram Sumer Puri Mahant's case (supra) was considered by the Hon'ble Supreme Court in Prakash Chand Sachdeva's case (supra) and distinguished by observing as under:

True, a suit or remedy in civil court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal Court as observed by this Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, ` 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. The normal rule is as stated by the Court in Puri's case. But that was a suit based on title. And that could be decided by civil Court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance u/s 145, Cr.P.C.

14. Similarly, in Ujagar Singh's case (supra), referred by counsel for the respondents, view taken is that mere pendency of dispute in a civil Court would not be enough to say that proceedings u/s 145 Cr.P.C. would amount to abuse of the process of the Court. The ratio of law laid down in this case would obviously not apply to the facts of the present case as here the civil Court has already determined the rights of the parties, holding that the petitioners are not only in possession but are owners of the property. The ratio of law laid down in Ram Sumer Puri Mahant's case (supra) would fully be attracted to the facts of the

present case. Similar is the situation in regard to Karnail Singh's case (Supra) referred to by counsel for respondent No. 4. In this case also, the case of Ram Sumer Puri Mahant's case (supra) was distinguished on the ground that there was no adjudication by the civil Court when the proceedings were launched u/s 145 of the Code. Rather, in the case of Kartar Singh v. Balbir Singh Malik SDM and Ors. 1990 (1) RCR 89, this Court had taken a view that once the matter is pending before a civil Court, parallel proceedings under the Code are in fact not competent in any way and the same are liable to be stayed till determination of disputed question of possession by the civil Court. This Court in the cases of Ujagar Singh and Karnail Singh (supra) though has referred to the case of Ram Sumer Puri Mahant's case (supra), yet it has apparently not taken note of the law laid down by the Hon'ble Supreme Court in Dharampal's case (supra). The observations made by the Hon'ble Supreme Court in Ram Sumer Puri Mahant's case (supra) and Dharampal's case (supra) are not open to be ignored. In fact, the Hon'ble Supreme Court in the case of Amresh Tiwari Vs. Lalta Prasad Dubey and Another, , has clearly held that when possession of the property was being examined by the civil Court, parallel criminal proceedings should not continue. Reiterating the view expressed in Ram Sumer Puri Mahant's case (supra), the Hon'ble Supreme Court, in case of Amresh Tiwari (supra), went on to hold:

We are unable to accept the submission that the principles laid down in Ram Sumer's case would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumer's case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.

15. Hon'ble Supreme Court has even distinguished the case of Jhummal alias Devandas Vs. State of Madhya Pradesh and Others, on the basis of which, it was urged that merely because civil suit is pending, does not mean that proceedings u/s 145 Cr.P.C. should be set at naught. It is observed as under in this case:

In our view this authority does not lay down any such broad proposition. In this case the proceedings u/s 145 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 in that context this Court held that merely because a civil suit had been filed did not mean that the concluded order u/s 145 Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. As 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 u/s 145. In our view on the facts of the present case the ratio laid down in Ram Sumer's case

(supra) 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 reliefs regarding protection of the property concerned can be applied for and granted by the civil court the proceedings u/s 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.

16. The law has very aptly been summed up by the Hon''ble Supreme Court in such like situation, as is noticed above. It can, thus, be said that it is not that in every case where civil suit is filed, proceedings u/s 145 Cr.P.C. would never lie. As is observed by the Hon''ble Supreme Court where suit of possession or for declaration of title can be applied for or granted by the civil Court, proceedings u/s 145 Cr.P.C. should not be allowed to continue. This is obviously so because the question of title as well as possession between the parties, as determined by the civil Court, are to bind the parties in this regard. Thus, the present case is squarely covered by the ratio of law laid down in Amresh Tiwari's case (supra). The judgments referred to and relied upon by counsel for respondent No. 4 are clearly distinguishable. The law, as settled by the Hon''ble Supreme Court in the cases of Dharampal, Ram Sumer Puri Mahant as also in Amresh Tiwari (supra) clearly gets attracted in the present case. The civil Court decree, which is in favour of the petitioners is to bind the parties till it is set-aside or upset in any manner. The submission made by learned Counsel for the petitioners that the decree of the civil Court is to bind the criminal proceedings would also have much substance. In support of this proposition, the learned Counsel has referred to number of judgments like Shanti Kumar Panda Vs. Shakuntala Devi, ; Karam Chand Ganga Prasad and Another Vs. Union of India (UOI) and Others, ; V.M.Shah v. State of Maharashtra and Anr. 1995 (3) RCR 459 Krishan Jeet Singh v. State of Haryana 2003 (1) RCR (Criminal) 183 Preetam Singh v. Sajjan Singh 2002 (3) RCR (Criminal) 245 and M.Chandrashekar Rao v. V.Kutamba Rao and Anr. 2006 (2) RCR 439. The net result would be that the proceedings under Sections 145 and 146 Cr.P.C. can not be allowed to continue in view of the decision rendered in the civil suit. These accordingly must come to an end and are, as such, ordered to be quashed.

17. Learned Counsel would further contend that other proceedings leading to registration of various FIRs against the petitioners should also be quashed in view of the finding given by the civil Court that the petitioners are owners in possession. Submission made is that the petitioners can not be accused of trespassing into a land, which is owned and possessed by them, as per the finding returned by the civil Court. This finding, according to the counsel, as per the law laid down and referred to above, is to bind the criminal Court and hence, continuing all the proceedings pursuant to the three different FIRs registered against the petitioners would be nothing but an abuse of the process of the Court.

18. These submissions made by the learned Counsel carry weight and have substance. Counsel for the respondents could only respond by saying that the finding of the civil Court has not yet acquired finality and is under appeal. According to the counsel, it would be pre-mature at this stage to order quashing of the proceedings pursuant to these FIRs as the criminal proceedings would continue if appeal against the judgments of the civil suits is allowed.

19. Having considered these rival submissions, I would say that it would be appropriate to end the proceedings in Criminal Misc. Nos. 47231,62954 and 62956 M of 2006 atleast till the matter is determined by the appellate Court. This is proper course to avoid any complications in future. In case the appellate Court is to give any different conclusion in regard to possession and ownership of this property, it may then substantiate the allegation of tress-pass as is alleged in the FIRs. The option of the State-prosecution can not be foreclosed at this stage. It may then become difficult for the respondents to pursue their allegations. To avoid such complication, it would now be appropriate to determine the criminal proceedings at this stage, quashing of which is sought through different petitions. These petitions have already been admitted and further proceedings stayed. The interim order/arrangement would continue. The parties would be at liberty to make appropriate application for taking up these petitions after decision of the appeals, which are filed against the judgments of the civil Court orders (Annexures P-19 and P-20).

20. Criminal Misc. No. 89754 of 2007 is accordingly allowed. Proceedings under Sections 145 and 146 Cr.P.C. initiated at the instance of the respondents in regard to property in dispute are quashed on the basis of determination of possession by civil Court decree. The petitioners will be entitled to their legal rights in regard to this property as may accrue to them from these judgments. It may require a mention that operation of the judgment passed by civil Court has not been stayed by the appellate Court.

21. Criminal Misc. Nos. 47231,62954, 62956 M of 2006 and 4072 M of 2007, which are already admitted are adjourned to be taken up for hearing on any application filed in this regard after the decision of the appeals.