
(2013) 05 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : C.R.M-M No. 36055 of 2012

Ram Avtar and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 146, 151, 482

Citation : (2014) 2 Crimes 267 : (2013) 3 RCR(Criminal) 323

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Akashdeep Singh, for the Appellant; R.N. Bhardwaj, AAG, Haryana and Mr. Parmod Parmar, Advocate for Respondents No. 3 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—This petition u/s 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 22.10.2012, u/s 145 of the Code of Criminal Procedure, passed by learned Sub-Divisional Magistrate in proceedings titled as Umesh Pal and others v. Ram Avtar and another (Annexure P-6), vide which the land in dispute was attached u/s 146 of the Code and Tehsildar, Rohtak was appointed as receiver till further orders. Learned counsel for the petitioners submits that the impugned order dated 22.10.2012, is illegal as a civil suit between the parties qua the same land is pending adjudication, therefore, 145 Cr.P.C. proceedings are not maintainable and that in order to avoid the breach of peace, the police has initiated proceedings u/s 107 /151 of the Code. Learned counsel further refers to Ranbir Singh Vs. Dalbir Singh and Others, and Ram Sumer Puri Mahant Vs. State of U.P. and Others, .

2. On the other hand, learned counsel for the respondents submits that the proceedings u/s 145 of the Code were initiated on the application filed by the petitioners themselves, and thus now they have no right to challenge the same proceedings in this Court.

3. Heard.

4. It is relevant to mention here that calendar u/s 145 of the Code was filed in Court by the police on 8.8.2012; civil suit was filed by the petitioners on 13.8.2012, and interim order was granted by Civil Judge, Rohtak on 27.9.2012, which was also extended on 16.10.2012, Proceedings u/s 107 /151 of the Code between the parties were initiated on 12.10.2012, and the impugned order dated 22.10.2012, was passed u/s 146 of the Code attaching the property and appointing a receiver, so that there may not be any breach of peace regarding the possession of the land. It is worthwhile to mention here that the petitioners and the respondents are brothers and their entire property is attached u/s 145 of the Code on calendar filed by the police on 23.11.2012. An order of attachment regarding remaining property was also passed on 2.1.2013. The impugned order is regarding some portion of the land while the subsequent proceedings were initiated regarding entire property of the parties. The initiation of proceedings under Sections 107 /151 of the Code during the pendency of the proceedings u/s 145 of the Code proves that there is a serious dispute regarding possession of the land between the parties, which is to be adjudicated by the executive authorities in order to avoid breach of peace.

5. So far as the maintainability of the proceedings u/s 145 of the Code on account of pendency of civil suit is concerned, it is apparent that the petitioners themselves put the state machinery into motion on 8.8.2012 for initiation of proceedings u/s 145 of the Code, thereafter they themselves filed a civil suit regarding the land in dispute on 13.8.2012. It is apparent that on the date of institution of proceedings u/s 145 Cr.P.C., no civil suit was pending between the parties. In *Parkash Chand Sachdeva v. State and another*, 1994(3) RCR (Cri) 217, it has been held that the proceedings u/s 145 of the Code cannot be dropped on the ground of pendency of the civil suit, when ownership is not disputed and there is no partition one cannot be permitted to act forcibly and unlawfully, and ask the others to act in accordance with law. Where the dispute is not on the right of possession but on the question of possession, the Magistrate is empowered to take cognizance u/s 145 of the Code and pendency of civil proceedings is of no consequence.

6. The case law cited by the learned counsel for the petitioners is distinguishable on facts. Keeping in view the facts and circumstances of the case, no ground is made out to quash the proceedings. Hence, the present petition stands dismissed.