
(1983) 05 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5095-M of 1982

Ram Dhari and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 03-05-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1983) 05 P&H CK 0030

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : C.B. Goel, for the Appellant; A.K. Walia for A.G. Haryana, Mr. S.K. Goyal for the Respondents 6 to 44 and Mr. K.C. Puri with Mr. R.C. Puri, for the Respondent

Judgement

M.M. Punchhi, J.—The three petitioners, namely, Ram Dhari son of Parbbu Manga son of Seeba and Manga son of Datu, residents of village Dhansoli, Tehsil Panipat, District Karnal, have approached this Court, invoking its inherent jurisdiction u/s 482 of the Code of Criminal Procedure. They claim that, under political pressure, proceedings u/s 145, Criminal Procedure Code, have been initiated with regard to a large parcel of land through the instrumentality of the Station House Officer, Police Station Saddar Panipat, vide his report dated 15th August, 1982 (Annexure P 2) on which Sub Division Magistrate, Panipat, passed the impugned order dated 19th August, 1982 (Annexure P 3) initiating such proceedings

2. The subject of dispute as disclosed therein is Killa Nos. 1 to 129 measuring 587 acres of land situated in village Dhansoli Now, according to the petitioners, this subject of dispute had already been subjected to proceedings u/s 145 of the Code of Criminal Procedure, which were settled finally by this court in Criminal Revision No. 1250 of 1967, decided on 5th February, 1969. The party found in possession of the subject of dispute is no other than the petitioners. Allegedly, even on breach of the aforesaid order. Criminal Original No. 69 of of 1969 was

filed in this Court, which was decided on 20th October, 1970 reaffirming the view that the dispute had been settled.

3. Learned counsel for the respondents have challenged the contention of the petitioners that the subject of dispute was the same regarding which the dispute of possession was settled by the High Court or that the present petitioners represent the party who was found successful in that litigation. Learned counsel for the petitioners, when confronted with this position, has not been able to satisfy me that the present three petitioners were the respondents in Criminal Revision No 1250 of 1967. However, he asserts that the present supporting respondents No 33 to 43 are those persons.

4. As it is, there is considerable dispute on facts. This Court cannot clear the webs so woven so as to make up its mind whether it is a case requiring interference u/s 482 of the Code of Criminal Procedure in the interest of justice or to prevent the abuse of the process of Court. Thus, it is to be left to the Sub Divisional Magistrate to treat the aforesaid objections of the petitioners or even those of the supporting respondents as preliminary and decide as to what is the impact of the litigation which culminated in the High Court, in which both the parties allege to have indulged.

5. In Criminal Misc. No. 907-M of 1983 (Niranjan Singh and others v. The State of Punjab Cr. Misc. No. 907-M of 1983) decided by me on March 11, 1983, I had taken the following view:--

Now, what is the aim of the dispute raised u/s 145, Code of Criminal Procedure, 1973. Obviously, the fact of actual possession of the subject of dispute is to be determined with reference to the date of the preliminary order. Sub-section (4) of section 145, Code of Criminal Procedure, 1973, specifically provides that the Magistrate shall, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute. The learned Sub Divisional Magistrate is of the view that whenever there is any dispute likely to cause breach of peace pertaining to land, then automatically section 145 of the Code of Criminal Procedure, 1973 is attracted. That is a wrong way of reading the section. The actual possession of the subject must be disputed. When one party is in possession of the land and the other party wants to get into it, there obviously arises, a dispute, but not a dispute which is to be settled in proceedings u/s 145, Code of Criminal Procedure. In that situation, it is the duty of officers to protect the interests of the person in possession till he is dispossessed by due process of law.

6. Thus, while dismissing this petition, it is ordered that the Sub-Divisional Magistrate may first determine as to whether there is ground to continue with the proceedings or drop them in the light of the orders of this Court allegedly passed over the subject of dispute, declaring one party or the other to be in possession of the same.

7. The Sub Divisional Magistrate, at the same time needs to be advised that if, by

a final judgment inter parties, be that of the Civil Court or that of Criminal Court, u/s 145, of the Code of Criminal Procedure, a dispute has been settled once in favour of one party declaring that party to be in possession thereof, then merely because the other party does not submit to that order and keeps raking up the dispute, wanting to get into possession of that property or deprive the other party its possession, fresh proceedings u/s 145 of the Code of Criminal Procedure are not to be restored to, but recourse has to be had u/s 107 of the Criminal Procedure. It promotes the rule of Law that orders of Courts, whether right or wrong, are strictly to be obeyed and not put to ridicule by assigning a constant agitative approach. That is hardly the purpose which, u/s 145 of the Code of Criminal Procedure, is sought to be achieved.

8. The parties through their counsel are directed to put in appearance before the Sub Divisional Magistrate, Panipat, on 18th May, 1983, for the purpose above indicated and it is expected that the learned Magistrate would pass a speaking order in that regard whether he wishes to proceed with the proceedings or chooses to drop them.