
(1987) 11 AHC CK 0065

In the Allahabad High Court

Case No : Criminal Miscellaneous Petition No's. 2974 and 4135 of 1987

Ranjit Singh and Others

APPELLANT

Vs

Moti Lal Katiyar and Others

RESPONDENT

Date of Decision : 10-11-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 397(2), 482

Citation : (1988) 1 AWC 176

Hon'ble Judges : R.P. Shukla, J

Bench : Single Bench

Advocate : Janardan Sahai and V.C. Tiwary, for the Appellant; A.G.A. and R.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.P. Shukla, J.—Through these two connected Criminal Misc. Applications u/s 482 Code of Criminal Procedure the prayer to quash the proceedings u/s 145 Code of Criminal Procedure in case No. 2 of 1987, pending before the sub-Divisional Magistrate, Bilhaur, Kanpur Dehat, is made. I propose to decide both these petitions by this order.

2. The facts giving rise to the aforesaid petitions are that the petitioners are the partners of M/s. Jamuna Ice and Cold Storage Mills, situate at Chaubey Pur Tahsil Bilhaur District Kanpur Dehat. That the aforesaid Cold Storage is said to have been constructed in the year 1979 and the licence was also granted in the same year. That the opposite parties Nos. 1 and 2 filed a civil suit, the same being number 5 of 1987 on 13-1-1987 in the Court of Civil Judge, Kanpur Dehat for permanent injunction restraining the defendants therein i.e. the present petitioners, from dispossessing the plaintiffs i.e. the opposite parties Nos. 1 and 2 in the present petitions with the allegations that the opposite parties Nos. 1 and 2 were the lessee of the said Ice and Cold Storage Mills since 1985 and the defendants in the said suit wanted to evict and dispossess them from the said

premises. Alongwith the plaint an application under Order 39 Rules 1 and 2 CPC was also moved claiming interim injunction during the pendency of the suit. The learned Judge vide his order dated 19-1-1987 held that the prima facie case as set up by the opposite parties Nos. 1 and 2 was not proved by any evidence on record and, therefore, he rejected the application for interim injunction. Thereafter, an application for review of the order dated 19-1-1987 was moved by the opposite parties Nos. 1 and 2. This application was also rejected by the Judge on 22-1-1987, who recorded the findings that it was not proved by the evidence or material on record that any lease has been created in favour of the opposite parties Nos. 1 and 2 or that they had been actually put in possession of the said Ice and Cold Storage Mills. These orders have been filed as annexures 1 and 2 to the petition. The aforesaid suit was still pending in the Court of the Civil Judge when on 23rd of February, 1987 the Opposite parties Nos. 1 and 2 moved an application with the similar allegations in the Court of the Sub-Divisional Magistrate, Bilhaur, District Kanpur Dehat u/s 145 Code of Criminal Procedure. The Sub-Divisional Magistrate vide his order dated 27-2-1987 passed the preliminary order u/s 145(1) of the Code of Criminal Procedure and simultaneously passed an order u/s 146(1) Code of Criminal Procedure attaching the said Ice and Cold Storage Mills. The opposite parties after the order of attachment passed by the Sub-Divisional Magistrate, Bilhaur, u/s 146(1) Code of Criminal Procedure on 27-2-1987, withdrew the civil suit on 5-3-1987. The applicants, who claim to be in peaceful possession of the said Cold Storage being aggrieved by the orders of the Sub-Divisional Magistrate Bilhaur, have preferred these petitions.

3. The learned Counsel for the applicants has contended, firstly, that the order passed by the Sub-Divisional Magistrate on 27-2-1987 is illegal, arbitrary and without jurisdiction and it appears that the same has been passed without any application of mind by the Sub -Divisional Magistrate. He has also contended that the Sub-Divisional Magistrate had no jurisdiction to pass" the order u/s 146(1) Code of Criminal Procedure simultaneously alongwith the order u/s 145(1) Code of Criminal Procedure. The learned Counsel for the applicants also contends that the proceedings u/s 145 Code of Criminal Procedure could not be allowed to continue as the civil suit for possession was pending in the competent civil court and an order with respect to the temporary injunction was passed by the civil court.

4. As regards the first contention of the learned Counsel for the applicant, it is settled proposition of law that the existence of the ingredients necessary for passing an order u/s 145(1) Code of Criminal Procedure would not automatically attract the provisions of Section 146(1) Code of Criminal Procedure for attachment of the property. Therefore, the Magistrate must satisfy himself as to whether emergency exists inspite of the order u/s 145(1) Code of Criminal Procedure before he passes an order of attachment u/s 146(1) Code of Criminal Procedure. The object of the attachment is to keep the subject matter of dispute in custodia legis so as to prevent the contesting parties from their attempt to

obtain the actual physical possession of the subject of the dispute. The order of attachment made u/s 146(1) Code of Criminal Procedure may have the effect of depriving the rightful occupier of his possession of the disputed properties. Therefore, the said power should be exercised with due care and caution and should be limited to cases in which the likelihood of the breach of peace is so imminent as to call for immediate action to prevent the same. The language of the impugned order does not show that the Magistrate was satisfied that it was a case of emergency inspite of an order u/s 145(1) Code of Criminal Procedure. It is evident from the order that the Sub-Divisional Magistrate, did not apply his judicial mind before passing the attachment order. This order, therefore, cannot be sustained.

5. As regards the second contention of the learned Counsel for the applicants, who has also placed reliance on *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, , wherein their Lordships of the Supreme Court have held:

When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel proceeding u/s 145 of the Code would not be justified. The parallel proceeding should not be permitted to continue and in the event of the decree of a civil court the criminal court should not be allowed to invoke its jurisdiction particularly when the 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 suit. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.

The learned Counsel for the opposite parties has argued that the civil suit No. 5 of 1987 was no longer pending in the court of Civil Judge, Kanpur as the same was withdrawn on 5-3-1987 and the opposite parties had every right to approach the criminal court u/s 145 Code of Criminal Procedure. I am unable to agree with the contention of the learned Counsel for the opposite parties. A person having title to the property or possession of the same can go to a civil court and have the question determined properly and effectively. An order u/s 145 Code of Criminal Procedure is only a temporary settlement of the dispute with a view to prevent the apprehension of breach of peace. Even after the decision of the dispute u/s 145 Code of Criminal Procedure the parties have to approach the competent civil court for proper and effective determination of the title and possession over the property. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court. In the instant case the opposite parties withdrew the civil suit only after the order of attachment was passed u/s 146(1) Code of Criminal Procedure. Thus, the withdrawal of the civil suit after passing of the order of the attachment by the Executive Magistrate appears to be mala fide and motivated. The Magistrate may initiate and continue the proceedings u/s 145 Code of Criminal Procedure irrespective of the pendency of the civil suit unless an interim order of the civil

court with respect to the possession of the disputed property is in operation. In the present case such an order was very much in operation. The Civil Judge held that the plaintiffs i.e. the opposite parties Nos. 1 and 2 failed to prove any lease being created in their favour and they also failed to prove that they had been actually put in possession of the Cold Storage. This is evident from annexures 1 and 2 to the connected petition No. 2974 of 1987. The fact that the opposite parties Nos. 1 and 2 withdrew the civil suit wherein the question of possession could have been properly and effectively determined and approached the criminal court u/s 145 Code of Criminal Procedure and obtained an order for attachment of the subject of dispute is nothing but mala-fide and vexatious and cannot be allowed to continue.

6. The learned Counsel for the opposite parties has contended that an order u/s 145(1) and 146(1) are interlocutory orders and u/s 397(2) Code of Criminal Procedure a revision against these orders is barred and, therefore, he contended that these orders could not be examined u/s 482 Code of Criminal Procedure. In *Madhu Limaye v. State of Maharashtra* 1978 SCC 10: 1978 AWC 96: 1978 ACrR 78, the Hon'ble Supreme Court has held:

The 1973 Code put a bar on the power of revision in order to facilitate expeditious disposal of cases. But in Section 482 it was provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction it should be held that the bar provided in Section 397(2) operates only in exercise of the revisional power of the High Court, meaning thereby, that the High Court will have no power of revision in relation to any interlocutory order. But in such a case, the inherent power will come into play there being no other provision in the Code for the redress of the grievances of the aggrieved party. In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice, interference of the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court.

7. I have already held that the proceedings u/s 145 Code of Criminal Procedure, initiated in the court of Sub-Divisional Magistrate, Bilhaur, Kanpur Dehat, by the opposite parties, is mala fide, vexatious and without jurisdiction in view of the fact that the civil suit where the question of possession was involved was pending in the civil court on the date when the order u/s 145(1) and 146(1) Code of Criminal Procedure were passed in the aforesaid proceedings and an injunction order was very much in operation. Therefore, the aforesaid proceedings cannot be allowed to continue as it would be nothing but abuse of the process of the Court.

8. In the result the applications succeed and they are allowed. The orders dated 27-2-1987 passed under Sections 145(1) and 146(1) of the Code of Criminal Procedure by the Sub-Divisional Magistrate, Bilbaur, District Kanpur Dehat, and the entire proceedings u/s 145 Code of Criminal Procedure in Case No. 2 of

1987, Moti Lal and Ors. v. Jaswant Singh and Ors., P. S. Chaubey Pur, District Kanpur Dehat, are hereby quashed.