

(2003) 07 DEL CK 0032

In the Delhi High Court

Case No : Criminal R. 311 of 2003 and Criminal M (M) 137 of 2003

Roop Lal Bhalla and Others

APPELLANT

Vs

State and Another
 Deepak Sharma of Skymark
Builders Vs State of NCT of Delhi and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 131, 145, 146

Citation : (2003) CriLJ 4308 : (2003) 106 DLT 388 : (2003) 70 DRJ 194 :
(2003) 3 JCC 1422 : (2005) 1 RCR(Criminal) 1006

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : S.K. Sharma, in Crl.R.311/2003 and Chetan Sharma and Vikas Sharma, in Criminal MM 137/200, for the Appellant; Chetan Sharma and Vikas Sharma, for respondent No.2 in Crl.R.311/2003 and S.K. Sharma, for respondents 3 and 5 to 10 in Crl.M(M) 137/2003, for the Respondent

Judgement

J.D. Kapoor, J.—Both these petitions are interlinked and arise from the same set of facts and proceedings and are being decided together.

2. Petitioners of Crl.R.311/2003 are challenging the order dated 7.4.2003 whereby Sub Divisional Magistrate (in short "S.D.M.") desealed the property in question pursuant to the order dated 14.1.2003 passed by this court staying the operation of the order dated 28.12.2002 passed by the S.D.M whereby the earlier order dated 8.4.2002 passed by the earlier S.D.M ordering the sealing of the suit property by invoking the provisions of Section 146 Cr.P.C was refused and the property was ordered to be desealed. It was on the application of the petitioners of Crl.M(M) 137/2003 that the order of the sealing of the property in question was passed on 8.4.2002.

3. These petitioners had also filed a civil suit for declaration challenging the genuineness of the sale deeds executed in favor of the petitioners of Crl.R.311/2003. In the said suit relief for permanent injunction was also sought

against these petitioners from selling, transferring, alienating, letting out or creating any third party interest. As is apparent the aforesaid suit impliedly admitted the possession of these petitioners over the suit property though took the plea that by false representation and defrauding, the property was sold to these petitioners. In the said suit, status quo order as to the possession of the properties was passed by this court. It was pursuant to this order that the petitioners of CrI.M(M) 137/2003 approached the SDM for sealing the suit property. Their applications were allowed and the property was sealed by order dated 8.4.2002.

4. Feeling aggrieved of this order, the petitioners of CrI.R.311/2003 approached the SDM for dieseling the property on the premise that the petitioners of CrI.M(M) 137/2003 have already sought civil remedy in the High Court wherein the status quo as to the possession of the properties has been passed. This plea of the petitioners found favor with the SDM who vide order dated 28.12.2002 desealed the property. This order gave rise to CrI.M(M) 137/2003 for seeking restoration of the earlier order of the SDM by virtue of which property was ordered to be sealed.

5. As is apparent from the aforesaid conspectus of facts the dispute mainly is of civil nature and civil remedy has been resorted to by the petitioners of CrI.M(M) 137/2003. It is not understandable as to what prompted the SDM to pass an order dated 8.4.2002 for sealing the property when the order for maintaining the status quo as to the possession of the property was passed by the High Court. The requirements of Section 145 Cr.P.C are that the SDM should order for sealing of the property only in the following circumstances:-

- (i) If it is a case of emergency;
- (ii) If none of the parties is in possession of the property;
- (iii) If the SDM is not in a position to satisfy himself as to which of the party was in possession of the property.

6. The civil suit filed by the petitioners of CrI.R.137/2003 shows that the petitioners of CrI.R.311/2003 were in possession of suit property as they filed a civil suit in this court to the effect that the alleged vendor of the property has by false representation and fraudulently transferred the property to the petitioners of CrI.R.311/2003 and Therefore the sale deeds executed in their favor were invalid and void and be cancelled. At the same time they also sought permanent injunction against these petitioners from creating any third party interest or selling or transferring or alienating the suit property. It was perhaps in view of the aforesaid averments made by the petitioners in CrI.M(M) 137/2003 that this court ordered for maintaining status quo as to possession. In the face of such an order the SDM was not competent to take the proceedings u/s 145 Cr.P.C. nor was he competent to pass an order for sealing the property as the points raised by the petitioners of CrI.M(M) 37/2003 were already subject matter of civil suit including the dispute as to the possession of the property in question.

7. The main premise of the contention of Mr.Chetan Sharma, learned senior counsel for the petitioner Skymark Builders in CrI.M(M) 137/2003 is that since agreement of building construction entered into between them and respondents Mr.K.M.Sharma and others provides that complete and undisturbed actual physical possession of the building and of the said plot of land shall remain with SKYMARK until SKYMARK has been paid in full under this agreement by the PRINCIPAL, agreement by Mr.K.M.Sharma and others shows that possession of the respondents towards the property was illegal. I am afraid this contention holds no water as the provision of contract between SKYMARK and Sh.K.M.Sharma and others is independent of right of sale deeds executed by Mr.K.M.Sharma and others in favor of the respondents of CrI.R.311/2003. The petitioners have independent remedy against Mr.K.M.Sharma and others by virtue of Building Construction Agreement. There was only a building construction agreement. Building Construction Agreement by no stretch of imagination is an agreement to sale or sale deed nor does it vest ownership in the person whose services are engaged in building construction.

8. Another contention raised by Mr.Sharma is that once the SDM has made a specific request to the D.C.P. (West) to submit report about the status of the property for the purpose of Section 145/146 Cr.P.C. he was bound to take into account the report of the DCP in this regard. This contention is of no substance as it was the discretion of the SDM to see the evidence or material independently and if he wanted or deemed proper he could have considered the report of DCP. However, perusal of the order of SDM shows that he did consider the report of ACP. Civil suit seeking permanent injunction against creating third party interest or transferring possession of the suit property by the respondents itself shows that the possession of the property with the respondents was pre-supposed and implied.

9. The object and scope of provisions of Section 145 or Section 146 Cr.P.C is very limited. Once the party has acquired physical possession of the property by virtue of sale deed even if the sale deed is alleged to have been fraudulent or fake, the said party cannot be ousted or dispossessed without due process of law. Moreover in the instant case, declaration has been sought by a civil decree that the sale deed was obtained fraudulently or is fake one. Until there is a finding in the civil suit by way of decree, possession of the respondents cannot be disturbed by resorting to proceedings u/s 145/146 Cr.P.C.

10. The said order was rightly rectified by the order dated 28.12.2002 passed by another SDM whereby the property was desealed and possession was restored. Merely because this court passed an order in CrI.M(M) 137/2003 while issuing the notice to show cause as to why the petition should not be admitted that the operation of the order dated 28.12.2002 shall remain stayed did not mean that the possession of the property should be disturbed or should be subjected to the order dated 8.4.2002 in spite of the fact that in the civil suit order for status quo as to the possession was passed. Such an order was farthest from the mind of

this court in the face of the order of status quo passed by this court.

11. Where the dispute as to the possession or ownership is pending before a civil court and order of status quo has been passed the jurisdiction of SDM is ousted in taking up either proceedings u/s 145 or pass an under u/s 146 Cr.P.C. What is permissible under Cr.P.C. is the proceedings under Sections 107 or 131 if there is an apprehension of breach of peace. No criminal court for that purpose SDM can usurp the power of civil court with regard to the immovable property regarding the possession or ownership.

12. In view of the foregoing reasons, CrIM(M) 137/2003 has no merit and is dismissed whereas CrI.R.311.2003 challenging the order of the SDM dated 7.4.2003 is allowed and Therefore order dated 7.4.2003 is set aside. The order dated 28.12.2002 shall stand restored and shall remain in operation.

13. The SDM record be returned forthwith.