
(1999) 12 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14729-M of 1999

Sahib Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Citation : (2000) 2 RCR(Criminal) 135

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : Arun Palli, Harbhagwan Singh, Liaqat Ali, G.S. Gill, Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J.

1. This petition has been filed challenging the imitiation of the proceedings initiated by the Sub Divisional Magistrate, Samana, under Section 145 Cr.P.C. and the consequential order passed by him under Section 146 Cr.P.C.
2. The Station House Officer, Police Station Patran Tehsil Samana, sent a report to the Sub Divisional Magistrate, Samana that there exists a dispute regarding the possession of the land compromised in Khasra Nos. 299/11/2, 20, 300/16, 17, 18, 23, 24/1, 311/7, 8, 13 and 14 situated in the village Shutrana, Tehsil Samana and that the dispute is likely to cause breach of peace and tranquillity. On the basis of the said report, the Sub Divisional Magistrate initiated the proceedings under Section 145 Cr.P.C. and directed both the parties to appear before him.
3. The first prayer of the petitioner is that the proceedings are liable to be quashed. But when the Police reported that there has been a likelihood of breach of peace, the Sub Divisional Magistrate rightly initiated the proceedings under Section 482 Cr.P.C. It is always open to the petitioner to approach the learned Magistrate by placing the material before him for dropping the proceedings.
4. After initiating the proceedings under Section 145(1) Cr.P.C. the learned Sub Divisional Magistrate also passed an order of attachment of the property in

dispute under Section 146 Cr.P.C. It is pertinent to observe that at this stage the petitioner has not availed the remedy of revision to the Sessions Court against the order passed by the Sub Divisional Magistrate under Section 146 Cr.P.C.

5. There is no dispute of the fact that originally the disputed property belonged to one Gian Singh. The petitioner and the 2nd respondent are sons of Gian Singh. According to the petitioner, his father Gian Singh executed a Will on 18.5.1978 giving the property to Sahib Singh and Ram Singh. The 2nd respondent who is also the son of Gian Singh has been excluded from inheriting his property under the Will. Therefore, the claim of the petitioner is that the property of Gian Singh was bequeathed by their father only to Sahib Singh and Ram Singh to the exclusion of his eldest son Hazur Singh, the 2nd respondent herein. It is also on record that a suit in regard to the validity of the Will is pending and no final decision has been given on the Will. In the absence of the Will, the 2nd respondent is also entitled to a share in the property of Gian Singh. On the basis of the report from the Station House Officer that there is likelihood of breach of peace since there is a dispute in regard to the land in question, the learned Sub Divisional Magistrate has initiated the proceedings under Section 145 Cr.P.C. and also passed an order of attachment under Section 146 Cr.P.C. The validity of the genuineness of the Will has not yet been established in any Court of law. Simply because some mutation has been sanctioned, it cannot be said that the petitioner has been in possession of the suit property.

6. In these circumstances, I do not find any ground warranting interference with the order of the Sub Divisional Magistrate, Samana, passed under Section 145 Cr.P.C. and also under Section 146 Cr.P.C.

7. There is no merit in the petition and the same is accordingly dismissed.