
(2015) 07 AHC CK 0243

In the Allahabad High Court

Case No : Criminal Misc. W.P. No. 6176 of 2015

Santosh Rana

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 4

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(8), 146, 146(1), 146(2)

Citation : (2016) 1 ACR 435 : (2016) 2 ALJ 110 : (2015) 112 ALR 863 :
(2016) 130 RD 68

Hon'ble Judges : Pankaj Naqvi, J.

Bench : Single Bench

Advocate : Arun K. Singh-I, for the Appellant; Ashish Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Naqvi, J.

Heard Sri Arun Kumar Singh-I, learned Counsel for the applicant, Sri Ashish Agarwal, learned Counsel for respondent No. 4 and the learned A.G.A.

This writ petition has been filed for quashing the proceedings of Misc. Case No. 4/2002, under sections 145/146(1), Cr.P.C. and the order dated 10.2.2015, to the extent it decides the issue of jurisdiction.

Background facts are as under:

1. The proceedings under section 145, Cr.P.C. were initiated on a police report dated 5.10.2002 of P.S. Kotwali City, Bijnor over the disputed property, i.e., a grove (9.7 acres in village Daranagar, Bijnor), between respondent No. 4 and his brother Tejendra Singh Baxi. An order dated 11.10.2002 came to be passed by S.D.M., Bijnor under section 146(1), Cr.P.C., wherein the aforesaid property was attached and the S.H.O. was directed to handover the same in the custody of a Superdagar till appropriate orders are obtained from a Competent Court. The

order dated 11.10.2002 was challenged by respondent No. 4 in Criminal Revision Nos. 24/2003 and 25/2003, under sections 145/146, Cr.P.C. wherein interim orders were passed on 20.3.2003. The Criminal Revision No. 25/2003 was allowed on 28.1.2014 and the order dated 24.10.2002 was set aside. The order dated 28.1.2004 was impugned in Criminal Revision No. 728/2004 before this Court. The possession of the attached property was given to the applicant under a superdaginama dated 24.10.2002. The applicant claims to have furnished the statements of accounts to the Court concerned. The proceedings under sections 145/146, Cr.P.C. eventually came to be disposed of in terms of a compromise entered between the parties (O.P. Nos. 4 and 5) before the Consolidation Officer in Criminal Revision No. 728/2004 on 7.3.2005 before this Court. The O.P. No. 4 filed an application dated 3.5.2007 before the S.D.M., Bijnor claiming compensation to the tune of Rs. 25,50,000/- alongwith interest @ 18 % from the applicant, a receiver from the earnings while the property in dispute was in his possession. The application was contested by filing objections dated 20.6.2007. By order dated 23.10.2007, the Tehsildar, Bijnor was directed to submit his report. The Tehsildar issued a notice to the applicant. The applicant submitted his reply dated 3.4.2008. The applicant filed applications dated 12.2.2014 and 27.1.2015 raising a plea of jurisdiction that once proceedings under 145/146, Cr.P.C. had come to an end, an application for claiming compensation is not maintainable. The Magistrate on 10.2.2015 rejected the applications filed by the applicant. The contention urged is that once the proceedings under sections 145/146, Cr.P.C. came to be disposed of in terms of compromise in Criminal Revision No. 728/2004 on 7.3.2005, an application for compensation at the instance of respondent No. 4, is not maintainable and was liable to be dismissed as such.

2. Sri Ashish Agarwal, learned Counsel for respondent No. 4 on the strength of the judgment of this Court in the cases of Jangi Lal v. Dwaraka Prasad, 1987 (2) ACC 228 and that of Lalmani v. State of U.P., 1990 (2) JIC 1110, submitted that the status of a receiver was that of a custodia legis of the property as he takes possession on behalf of the Court, in order to safeguard its interest for the benefit of the person, who ultimately, is found entitled to its possession. He contends that this necessarily pre-supposes that the Receiver has to furnish the statement of accounts of earnings/expenditure involved in the maintenance of the property to the Court concerned.

3. The moot question involved is as to whether in proceedings arising out of section 145/146, Cr.P.C., is it open for the learned Magistrate to direct the Receiver to compensate for damages in respect of misfeasance while the property was under his custodia legis.

4. In order to examine the issue, it would be apposite to have a brief resume of the statutory scheme.

5. Section 145, Cr.P.C. relates to dispute as to immovable property and provides that whenever an Executive Magistrate is satisfied from a report of a police

officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, he shall proceed to pass an order in writing (preliminary order), stating the grounds of being dissatisfied and required the parties concerned to appear before him alongwith their respective claims as to the fact of actual possession of the subject of dispute. Sub-section (4) provides that the Magistrate after considering the rival claims and the evidence and after hearing the parties concerned, decide as to the which of the parties, was in possession as on the date on which the preliminary order was passed. The proviso appended thereto provides that if either of the parties has been dispossessed within two months next before the date on which the report of the police officer or other information was received by the Magistrate or after the date of the preliminary order, he may treat the dispossessed party to be in possession on the date of the preliminary order. Sub-section (8) provides that if the Magistrate is of the opinion that any crop or other products of the property, the subject of dispute, is subject to speedy and natural decay, he may make an order for sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale - proceeds thereof, as he thinks fit.

6. Section 146 of the Code relates to power of the Magistrate to attach the subject of dispute and to appoint Receiver, which is quoted hereunder:

146. Power to attach subject of dispute and to appoint receiver.--(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof: Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate--

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

7. A perusal of section 146(1) manifests that it confers powers upon the Magistrate to pass an order of attachment, if he considers the matter to be of emergency or if he is dissatisfied that none of the parties was then in such possession, or if he is unable to satisfy as to which of them was in possession, he may while deciding the dispute as regards the possession to attach the property, till the possession is determined by a Competent Court as to the person entitled to the possession. Sub-section (2) enables the Magistrate to make an interim arrangement to look after the property by appointing a receiver, who shall be under the control of the Magistrate and would have all the powers of receiver under the provisions of the Code of Civil Procedure. The receiver becomes a custodia legis and retains the possession of the subject of dispute to the person, ultimately, found entitled to. As a prudent person, the law enjoins upon him not only to protect and preserve the property, but also to ensure that if the property is capable of giving any usufruct its sale proceeds be deposited and furnished in the statement of account/expenditure before the Court concerned. Sub-section (2) makes a specific reference that the powers of receiver so appointed, shall be the same as are the powers of the receiver under the Code of Civil Procedure. Rule 4 of Order XL of C.P.C. provides that where a receiver fails to submit his account at such period and in such form, as the Court directs or fails to pay the amount due from him, as the Court directs or occasions loss to the property by his willful default or gross negligence, the Court may direct his property (Receiver) to be attached and may sell such property, and may apply the proceeds to make any good amount found to be due from him or any loss occasioned by him and shall pay the balance, if any, to the receiver.

8. A Division Bench of this Court in Jangi Lal (supra), held that in inquiry under sub-section 145 of the Code, the Magistrate entrusts the property to the custody of a Supardar, he is competent at any stage upon defalcation or dissipation being brought to notice to direct production of the property in the Court or determine its equivalent value and require the same to be deposited in the Court with the object of reimbursement of the same to the party found in possession on the relevant date and the power in this respect is implicit in what is provided for in sections 145(8)/146(2)/452(1). Similar view is expressed in the case of Lalmani (supra).

9. Considering the salutary effect of sub-section (2) of section 146 and that of Rule 4 of Order XL, C.P.C. which is to preserve and protect the subject of dispute in the possession of the receiver as custodia legis who could be made responsible for defalcation and dissipation, the Court does not find any indication to suggest that such power cannot be exercised after the proceedings have come to an end. If the contention which is sought to be advanced by the applicant is accepted, it would mean that once proceedings under sections 145/146, Cr.P.C. have come to an end and the property released in favour of the person found entitled to it, a claim for defalcation and dissipation as against receiver, being not maintainable, would be counter-productive and detrimental to the concept of custodia legis, which deserves to be rejected.

10. It is not disputed that the applicant was a receiver under a superdginama dated 24.10.2002 and the proceedings under section 145/146, Cr.P.C. came to an end under a compromise filed before the consolidation authority as indicated in the order of this Court dated 7.3.2005.

11. The impugned order does not suffer from any jurisdictional defect. The writ petition is dismissed. No order as to costs.

However, it is clarified that this Court has only adjudicated on the issue of jurisdiction of the Magistrate to entertain an application for compensation as against a Superdigar and no part of this order be construed as an expression on the merits of the claim.