
(1987) 01 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2430-M of 1986

Shafaqat Ali Khan and anr.

APPELLANT

Vs

Abdul Latif Khan and ors.

RESPONDENT

Date of Decision : 28-01-1987

Acts Referred:

Citation : (1987) 1 AICLR 81 : (1987) 2 RCR(Criminal) 126

Hon'ble Judges : S.S.Sodhi, J

Advocate : G.S. Bhatia, G.S. Bhatia, Munishwar Puri, Harbans Singh., Jatinder Singh, Advocates for appearing Parties

Judgement

S.S. Sodhi, J.—Initiation of parallel proceedings under Section 145 of the Code of Criminal Procedure, 1973, during the pendency of a civil suit between the same parties, pertaining to the very property being the bone of contention in both the proceedings and culminating in an order being passed by the Magistrate in conflict with that of the civil court, cannot indeed be countenanced.

2. The dispute between the parties here is with regard to a house, which according to the petitioner, shafaquat Ali Khan belonged to Sardhana Begum. The petitioner is said to have purchased this house from Sardhana Begum vide registered saledeed of June 1, 1983. Sardhana Begum later died on December 7, 1982.

3. On December 19, 1985, the petitioner filed a suit for permanent injunction in the court of Shri H.C.Arora, Subordinate Judge Ist Class, Malerkotla and at the same time prayed for a temporary injunction. An order was passed on that date restraining the respondents, Abdul Latif Khan and Modh. Salim Khan from dispossessing the petitionerShafaqat Ali Kahn from the property in suit except in due course of law. Sometime thereafter, on February 24, 1986, on a police report, proceedings were initiated against the petitioner and the respondents under section 145 of the Code of Criminal Procedure, 1973. In these proceedings on March 3, 1986, the SubDivisional Magistrate, Malerkotla passed an order under section 146 of the Code of Criminal Procedure, 1973, attaching the

property in dispute and appointing the Tehsildar, Malerkotla as Receiver to immediately take possession of it.

4. On the next day, that is March 4, 1986, the petitioner filed another suit for injunction pertaining to the same property and there again a temporary injunction was granted to restrain the respondent from dispossessing the petitioner forcibly. This order is said to have been conveyed to the REceiver on the same day as a result of which he refrained from taking possession.

5. The question that now arises for consideration is whether, in these circumstances proceedings under Sec. 145 of the Code of Criminal procedure, 1973 can be allowed to continue and in particular with regard to the legality and propriety of the order of the SubDivisional Magistrate, appointing a Receiver and directing him to take possession of the property in dispute, an order, which on the face of it it clearly in conflict with that of civil Court, whereby a temporary injunction was granted to the petitioner to protect his possession over the property. The answer here is provided by the judgment of the Division Bench in Mohinder Singh v. Dilbagh Rai, 1976 P.L.R. 803, which is an authority for the proposition that where a party has a stay order the Magistrate will not launch proceedings under Section 145 of the Code of Criminal Procedure, 1973 to step in to start parallel proceedings except to defend the orders of the civil Court by not allowing the aggressor to defend the orders fo the civil court by not allowing the aggressor to establish himself in possession in violation of the orders of the civil Court. Such being the settled position in law, there can be no escape from the conclusion that the order under Section 146 of the Code of Criminal Procedure, 173, appointing a Receiver to take possession was clearly in conflict with the order of the civil court and in the situation, the proceedings initiated under section 145 of the Code of Criminal Procedure, 1973 were not warranted. These proceedings are accordingly hereby quashed as prayed.

6. This petition is thus accepted.