

(2001) 04 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4184-M of 2001

Shish Pal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 146, 151
Penal Code, 1860 (IPC) — Section 148, 149, 323, 324, 325

Citation : (2001) 2 RCR(Criminal) 826

Hon'ble Judges : K.S. Kumaran, J

Bench : Single Bench

Advocate : Mr. R.K. Nagpal, for the Appellant; Mr. Sudhir Nehra, AAG and Ms. Munisha Lamba, for Mr. Rajesh Lambha, for the Respondent

Judgement

K.S. Kumaran, J.—The Station House Officer, Police Station Bhunna, presented a Calendra (annexure P-4) u/s 145 Cr-P.C. dated 31.10.2000 before the Sub Divisional Magistrate, Fntehabad, wherein the 4th respondent-Sarvati was shown as the first party while the petitioners and certain others were shown as second party. The Station House Officer mentioned that the land in dispute is Mushtarka Khala and Guddi Devi, who was in possession has given her land to Sarvati Devi. He has also stated that since the land is Mushtarka Khata, the share-holders are claiming their own rights and there is dispute between the two parties and, therefore, F.I.R. No. 112 of 2000 has been registered under Sections 148, 149, 323, 324, 325 at Police Station Bhunna. He has also mentioned that sowing is likely to take place and at that time crime may be committed. Therefore, he had requested proceedings may be initiated, and the property be attached u/s 146 Cr.P.C.

2. On the basis of this Calendra, the Learned Sub Divisional Magistrate, Fatehabad, passed the order dated 29.12.2000 (annexure P-3). The learned Magistrate observed that it had been made to appear to him that a dispute likely to induce breach of peace existed between the two parties concerning a piece of

land measuring 56 kanals 7 marlas in village Dhani Dulat and, therefore, the parties were called upon to state in writing their respective claims as to possession. He has also observed that on enquiry, he was unable to satisfy himself as to which of the parties was in possession of the land and, therefore, he was appointing the Receiver to attach and hold the property.

3. The petitioners have, therefore, approached this Court u/s 482 Cr.P.C. for quashing the Calendra (annexure P-4) and the order of the learned Magistrate (an-nexure P-3) as also the consequential proceedings arising therefrom. According to the petitioners, they are owners in possession of the disputed land, which is evident from the jamabandi and girdwar (annexures 1 and 2). They also claim that the land being mus-tarka khata jointly possessed by the petitioners, the proceedings u/s 145 Cr.P.C. are not maintainable. The petitioners claim that the 4th respondent has stepped into the shoes of Guddi Devi, only to harass the petitioners, and is also harassing them in connivance with the other respondents. They also claim that they have not created any breach of peace, and that the proceedings u/s 145 Cr.P.C. are nothing but abuse of process of Court. According to the petitioners, the orders have been passed without any application of mind.

4. Reply has been filed on behalf of respondents No. 1 and 2 by Sub Inspector-S.H.O. Police Station, Bhunna, wherein he has stated that the petitioners No. 1, 6 and 7 are facing trial for offences under Sections 326, 323, 148 and 149 I.P.C. They have also stated that as per the investigation, both the parties used to be in possession of the disputed land. They have admitted that the land in question is Mushtarka Khata. According to them the 4th respondent has purchased the land in question from Guddi Devi under sale deed dated 18.1.2000, and that the petitioners and 4th respondent have created breach of peace necessitating the filing of the Calendra u/s 145 Cr.P.C. against both of them. According to these respondents both the parties have been charged under Sections 107/151 Cr.P.C. because of the apprehension of breach of peace by the parties.

5. The 4th respondent filed the following reply :-

The 4th respondent had entered into an agreement and also purchased the share of Guddi Devi which were executed on 18.1.2000. Possession was also given on the same date. Guddi Devi delivered possession of Khasra No. 97/17 (7K-15M). 4th respondent has been in possession of the share of Guddi Devi. On 15.6.2000, there was an oral compromise between the 4th respondent and the petitioners. The allegations that the petitioners are owners in possession in disputed. Guddi Devi widow of Jai Parkash became owner of 1/14th share (4 kanals) Killa No. (sic) and she is the complete owner of the same. The jamabandi for the year 1997-98 shows Jai Parkash as the owner of 1/7th share of the land in Killa No. 10. The said share of Jai Parkash devolved upon his widow Guddi Devi and son Raj Kumar. The 4th respondent is co-owner in the disputed land. Even though the land is Mushtarka Khata as per revenue record, in reality oral partition had taken place regarding the said land. A compromise was effected between the petitioners and the 4th respondent on 15.6.2000. But on 17.6.2001 the

petitioners and others with an intent to dispossess the 4th respondent, entered the land and started disturbing the crops. Proceedings under Sections 107/151 Cr.P.C. had been initiated.

6. I have heard the counsel for both the sides and perused the records.

7. The learned counsel for the petitioners contends that the land in question is a Mushtarka khata in the joint possession of the petitioners and, therefore, the proceedings u/s 145 Cr.P.C. are not maintainable. He also contends that even according to the 4th respondent, she and her son purchased a 1/4th share only. Another contention put forward by the learned counsel for the petitioners is that the learned Magistrate was not competent to pass a composite order both under Sections 145 and 146 Cr.P.C.

8. In the Calendra itself it has been stated that the land is Mushtarka Khata and that Guddi Devi has given the land to Sarvati Devi, the 4th respondent herein. In the reply filed by the S.H.O. concerned also it has been admitted that the land in question is Mushtarka khata. It has also been stated therein that as per the investigation both the parties used to be in possession of the disputed land though it is stated that sometimes Sarvati Devi (4th respondent) came in possession over the suit land, and sometimes petitioners came in possession of the same. The learned counsel for the petitioners points out from annexure P-2, the copy of the Khasra Girdawari that the petitioners herein and others are the owners of the land in dispute. He also points out from annexure P-1 the copy of the Jamabandi that the petitioner are in joint possession along with others, and self-cultivation is being carried on by them.

9. I find that even in the reply filed by the 4th respondent-Sarvati Devi, it has been stated that Jai Parkash was the owner of 1/7th share of the land in dispute and his share devolved upon his widow Guddi Devi, and their son Raj Kumar. The 4th respondent, as per the reply statement, claims to have purchased the 1/14th share from Guddi Devi (under annexure R4/1 on 18.1.2000) and to have entered into agreement for purchase of 1/14th share from Raj Kumar the son of the Jai Parkash, under annexure R4/2 on 18.1.2000. The 4th respondent Sarvati also claims to have taken possession of these properties covered by annexures R4/1 and 2. But a perusal of the annexure P-1, the jamabandi shows that Jai Parkash (the husband and father respectively of Guddi Devi and Raj Kumar) was co-owner along with the petitioners and others. His 1/7th share in the property is stated to have devolved upon his widow and son namely, Guddi Devi and Raj Kumar. Annexure P-1, the jamabandi also shows that the petitioners and others are carrying on self-cultivation of the land in dispute. The 4th respondent has only purchased the property in the year 2000 and claims to have taken possession. The contention of the learned counsel for the petitioners is that when it has been stated in Calendra itself that the property is Mushtarka khata and when the jamabandi also shows that the petitioners, who are co-owners, are in joint possession of the land in dispute, proceedings u/s 145 Cr.P.C are not competent and, therefore, these proceedings and the order of attachment are

liable to be set aside. The learned counsel for the petitioners relies upon a decision of this Court in *Nahar Singh v. State of Punjab* 2000(3) RCR 425 which supports his contention. This Court relied upon two other decisions in *Chand Rattan and ors. v. Shan Rattan and ors.* 1989(2) CLR 679 and *Bhawan Pal v. Prem Kumar Jain and Ors.* 1982 CLR 121 wherein it was held that where the property in dispute is in joint possession of the parties, proceedings u/s 145 Cr.P.C. are not maintainable, and held that the parties being in joint possession or deemed joint possession, proceedings u/s 145 Cr.P.C. should not have been resorted to.

10. This section clearly supports the contention of the learned counsel for the petitioners that since the petitioners are in joint possession, the proceedings u/s 145 Cr.P.C. are not maintainable.

11. The learned counsel for the 4th respondent on the other hand relied upon the decision of the Patna High Court in *Kesheo Prasad Singh Vs. Ram Baran Chaubey*, . But, that was a case where one set of persons claimed exclusive possession over a major portion of the property while another set of persons claimed to be in joint possession along with them of the entire land. The Patna High Court held that this fact did not make it any the less a question of disputed actual possession. But in view of decision of this Court cited above, the respondents cannot draw support from the decision of the Patna High Court.

12. Another decision relied upon by the learned counsel for the 4th respondent is also of the Patna High Court rendered in *Mt. Sudamawati Kuer Vs. Ram Chandra Singh and Others*, . In this decision the Patna High Court held that in case where both the parties are in joint possession, there was no justification for dropping the proceedings but the proper order would be an order to the effect that, both parties having been found to be in possession, no order can be passed against either party. The Patna High Court also held that Magistrate may start proceedings u/s 107 Cr.P.C. against both or one of the parties. But this decision does not support the contention of the 4th respondent that Section 145 Cr.P.C. proceedings are maintainable in such circumstances where the parties are in joint possession. Secondly in view of the decision of this High Court in *Nahar Singh v. State of Punjab* 2000(3) RCR 425 this decision of the Patna High Court will not be any help to the respondents.

13. The learned counsel for the 4th respondent also relied upon a decision of the Hon'ble Supreme Court in *Prakash Chand Sachdeva Vs. The State and another*, wherein it was held that the rule that, when there was no dispute about title, a suit or remedy in civil Court for possession or injunction normally prevents a person from invoking the jurisdiction of the Criminal Court would not apply. It was also held that when claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition, one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. The Hon'ble Supreme Court also held that where the dispute is not of the right to possession but on the question of possession the Magistrate is empowered to

take cognizance u/s 145 Cr.P.C. But that was a case where the appellant before the Hon''ble Supreme Court who was in possession of a separate portion of the property, found that his belongings had been removed from that portion and that portion had been locked. Therefore, he had approached the Court u/s 145 Cr.P.C. In these circumstances the Hon''ble Supreme Court held that dismissal of the proceedings u/s 145 Cr.P.C. was not sustainable and directed possession be restored to the appellant. This decision again will not be applicable to the facts of this case and will not be of any help to the respondents, because that was a case where the appellant wanted to protect his possession.

14. The learned counsel for the respondents also relied upon a decision of the Allahabad High Court in *Ram Shanker Tewari and Another Vs. The State and Others*, . That was a case where the joint land was in the actual possession of the co-owners. The Allahabad High Court in such circumstances held that the Magistrate had the jurisdiction to start proceedings u/s 145 Cr.P.C. in view of the dispute with regard to the said land was likely to cause a breach of peace. Therefore, this decision will not help the respondents.

15. Therefore, taking into consideration all these aspects, I am of the view that even when according to the Calendra it has been stated that the land is Mushtarka Khata and when the Jamabandi annexure P-1 shows that the land in dispute is in the self-cultivation of the petitioners and others, which means that they are in joint possession of the land in dispute, the proceedings u/s 145 Cr.P.C. are not competent. If the 4th respondent, who has got a sale deed and an agreement to sell in her favour and who also claims to be in joint possession has any grievance and wants any remedy, she will have to take recourse to suitable proceedings in accordance with law, but cannot resort to the proceedings u/s 145 Cr.P.C. against the petitioners who are in joint possession. Therefore, the initiation of the proceedings u/s 145 Cr.P.C. and the appointment of the Receiver for the land in dispute cannot be sustained.

16. Another ground urged by the learned counsel for the petitioners is that the learned Magistrate has passed a composite order under Sections 145 and 146 Cr.P.C., which is not permissible under law, according to him. A reading of the order of the learned Magistrate (annexure P-3) shows that it has been made to appear to him that a dispute likely to induce a breach of peace existed between the 4th respondent herein (first party) and Guddi Devi and others (second party) regarding the disputed land, that the said parties were called upon to state in writing their respective claims as to the actual possession of the land, that on enquiry he was unable to satisfy himself as to which of the parties was in possession of the said land and, therefore, he had appointed a Receiver.

17. The learned counsel for the petitioners contends that such a composite order could not be passed. He contends first the preliminary order should have been passed u/s 145 Cr.P.C. and thereafter the order of appointing a Receiver and attaching the property should have been passed. In this connection, the learned counsel for the petitioners relied upon decision of this Court in *Lord Shiva*

Charitable Trust v. State of Haryana 1999(1) RCR 706 this decision is not applicable to the facts of this case. In this decision relied upon by the learned counsel for the petitioners it has been held that a composite order could be legally passed, but the Magistrate has to first consider from the material placed before him whether there existed an apprehension of breach of peace relating to the Immovable property etc., whether an order u/s 145 Cr.P.C. is required to be passed, and that after recording such a satisfaction, the learned Executive Magistrate could pass an order u/s 145(1) Cr.P.C. In that case the Court, on facts, found that this has not been done and therefore quashed the proceedings. Therefore, on facts this case is distinguishable and does not apply to the facts of the case on one hand.

18. I have already extracted the order passed by the learned Magistrate (annexure P-3) in this case. The learned Magistrate had at first observed that if has been made to appear to him that a dispute likely to induce a breach of peace existed between the parties, and that the parties were called upon to file their respective claims. He then proceeded to hold that on enquiry, he was unable to satisfy himself as to which of the parties was in possession and, therefore, had appointed a Receiver. Therefore, the contention of the petitioners that the Magistrate was not competent to pass a composite order in the circumstances of the case is not acceptable.

19. The learned counsel for the 4th respondent also relied upon a decision of the Andhra Pradesh High Court in MA Rahaman v. State of A.P. 1981 CriLJ 1291 in support of his contention that a composite order could be passed, and it was not necessary that there should be a time-lag between the orders u/s 145(I) and 146 Cr.P.C. This decision also supports him.

20. But, in view of my findings that the petitioners are in joint possession of the land in dispute and, therefore, the proceedings u/s 145 Cr.P.C. are unsustainable, this petition has to succeed.

21. Resultantly, this petition is allowed quashing annexures P-3 and P-4 and the consequential proceedings.

22. Petition allowed.