
(1996) 09 RAJ CK 0007

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 469 of 1995

Shivdan Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 145, 146, 397

Citation : (1997) 1 RLW 413 : (1997) 2 WLC 592 : (1996) 2 WLN 157

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Yadav, J.—The present criminal misc. petition has been filed by the petitioners for quashing the proceedings initiated by a learned Executive Magistrate u/s 145 Cr.P.C.

2. Brief facts borne out from the perusal of record which are necessary for just decision of the present case are that the petitioners alleged themselves to be in exclusive possession of House No. 355 in ward No. I, Kundpara, Jaisalmer alleging themselves to be the owners. It is alleged that petitioners No. I let out this house on 3.3.92 to Sub-Divisional Officer (Sheep and Wool), C.A.D., Indira Gandhi Canal Project, Jaisalmer and a rent deed was also executed by the said officer. The house in question was given on rent for a period of two years which expired on 3.3.95. It is evident from Anx. 2 as well as Anx. 3 that after expiry of period of tenancy i.e. on 3.3.95, the house in question is in possession of the petitioners.

3. Indisputably, respondent No. 3, in the capacity of power of attorney holder of Shri Umaid Singh son of Shri Ajit Malji, brother of petitioner No. 1, filed a regular civil suit No. 52/94 in the court of Munsif, Jaisalmer on 15.7.94. The aforesaid regular civil suit is still pending between the parties in the court of Civil Judge (Jr. Division), Jaisalmer.

4. It is further evident from perusal of Anx.2 that when the attempt of the respondents No. 2 and 3 to enter in possession of the house in question resulted into fiasco, they gave a written report to S.H.O., Kotwali, Jaisalmer, who after making an inquiry and also after recording statements of Anil Acharya, Prahlad Kumar and Smt. Karuna, reported the matter to the Executive Magistrate stating therein that the petitioners and respondents are at daggers-drawn and there is serious apprehension of breach of peace between the parties with regard to ownership of the house in question, therefore, according to him in order to arrest the apprehension of breach of peace, the proceedings u/s 145 Cr.P.C. may be initiated.

5. After receipt of the report of S.H.O. Kotwali, Jaisalmer dated 13.7.95, the learned Executive Magistrate purported to issue notices in exercise of his power u/s 145(1) Cr.P.C. being satisfied about apprehension of breach of peace, requiring the parties in dispute in respect of house No. 355 of ward No. 1, Kundpara, Jaisalmer, to attend his court on 23.8.95 in person at 10.30 a.m. and to put in written statements of their respective claims as respects the fact of actual physical possession of the subject in dispute.

6. Aggrieved against issuance of notices u/s 145(1) Cr.P.C, earlier a revision was filed u/s 397(1) Cr.P.C. before the learned District Judge, Jaisalmer. It is alleged that the aforesaid revision was filed by the petitioners due to ill- advice and after getting proper legal advice said revision was not pressed and the present criminal misc. petition is filed before this Court.

7. Learned Counsel for the petitioners Shri M.C. Bhoot was directed by this Court on 7.8.96 to produce a copy of the order passed by the learned District Judge. In pursuance of order dated 7.8.96, a certified copy of the order passed by the learned District Judge, Jaisalmer has been produced which reveals that the said revision has been dismissed as not pressed.

8. It would be pertinent to mention here that an identical question came up for consideration before me in the case of Chatra Ram and Ors. v. State of Rajasthan and Ors. in SB Cr. Misc. Petition No. 272/96, decided on 15.7.96 where in paragraph 15, it has been specifically held which reads thus:

15.--It is true that to arrest apprehension of breach of peace and to maintain public tranquillity is within the exclusive domain of Executive Magistrate as well as the District Administration, therefore, in such situation wherever it is brought to the notice of Executive Magistrate that a regular suit is pending before a competent court involving the question of possession and the parties are capable to approach the said competent court to obtain temporary injunction or to get a receiver appointed for protection of property during the pendency of the trial of such suit or it is brought to their notice that the parties had actually approached such competent court and had obtained an interim injunction or had got a receiver appointed for protection of the property during trial of such suit then instead of invoking their jurisdiction u/s 145(1) and 146(1) Cr.P.C. they are

under legal obligation to proceed u/s 107 read with 116 Cr.P.C. to arrest the apprehension of breach of peace between the parties.

9. The learned Counsel appearing on behalf of the respondent No. 3 Shri M.D. Purohit argued that in order to arrest apprehension of breach of peace between the parties in the present facts and circumstances of the case, it can be achieved by initiating proceedings u/s 145 Cr.P.C. as well as by initiating proceedings u/s 107 read with 116 Cr.P.C. According to Shri Purohit u/s 145(10) Cr.P.C. nothing shall be deemed to be in derogation of the powers of Magistrate to proceed u/s 107 Cr.P.C.

10. To my mind, the phraseology used u/s 145(1) and 145(10) Cr.P.C. lead towards an irresistible conclusion that ordinarily when an Executive Magistrate receives information about threaten breach of peace between the parties on account of dispute regarding land or water or boundaries thereof then he should proceed u/s 145(1) Cr.P.C. and it is left at his discretion to proceed or not to proceed u/s 107 Cr.P.C. simultaneously but whenever and wherever it is brought to his notice that a suit is pending before a competent court involving question of possession and the parties are either capable to approach such court to obtain interim injunction or to get a receiver appointed or actually one of the party had approached such court and obtained either temporary injunction or got a receiver appointed for protection of land in dispute during the pendency of such suit then an Executive Magistrate has no jurisdiction to proceed u/s 145(1) Cr.P.C. In such grave situation to arrest the apprehension of breach of peace between the parties he has jurisdiction to proceed u/s 107/116 Cr.P.C.

11. I am of the view that in latter facts and circumstances of the case where a suit involving possession is pending before competent court and parties are free to obtain an ad-interim order for protection of the property during pendency of such suit, it would be futile exercise to initiate proceedings u/s 145 Cr.P.C. as it would lead to multiplicity of proceedings, unnecessary expenses to the parties and would also amount wasting of public time.

12. There is yet another reason to arrive at the aforesaid conclusion. In the present case civil suit No. 52/94 was filed by respondents No. 2 and 3 on 15.7.94 against petitioner No. 1 and his tenants admitting his possession whereas the present proceedings are initiated by them on 28.7.95 after expiry of more than a year which is apparent from perusal of copy of plaint of civil suit No. 52/94, Anx.1 on record. A perusal of FIR lodged on 28.7.95, Anx.2, and paragraph No. 9 of the written statement filed by the respondents No. 2 and 3 in response to notices issued to them u/s 145(1) Cr.P.C. further reveal that both respondents No. 2 and 3 had admitted possession of petitioner No. 1 on the date of preliminary order and two months prior to it.

13. It is to be noticed that Sub-section (4) of Section 145 Cr.P.C. clearly provides that an Executive Magistrate without reference to the merits or claims of any of the parties to a right to possess the subject of dispute peruse the statements so

put in hear the parties receive all such evidence as may be produced by the parties, take such further evidence if any as he thinks necessary and if possible decide whether any and which of the parties was at the date of preliminary order made by him under Sub-section (1) of the said Section in possession of the subject of the dispute. Proviso of Sub-section (4) of Section 145 Cr.P.C. further provides that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of police officer or other information was received by him or after that date and before the date of his preliminary order under Sub-section (1) of Section 145 Cr.P.C. he may treat the party so dispossessed as if that party had been in possession on the date of preliminary order passed by him under Sub-section (1) of the said Section.

14. In my opinion conjoined reading of Sub-section (1) of Section 145 and Sub-section (4) of Section 145 Cr.P.C. throw a flood of light that apprehension of breach of peace is a condition precedent which confers jurisdiction on an Executive Magistrate to entertain an application u/s 145 Cr.P.C. with an object to decide the actual physical possession of parties on the date of preliminary order passed under Sub-section (1) of Section 145 Cr.P.C. by him and also forcible and wrongful dispossession within two months next before the date on which the report of police officer or other information was received by him or after that date and before the date of preliminary order without being influenced with right to possession of such parties.

15. Thus although for initiation of proceeding under Sub-section (1) of Section 145 Cr.P.C. apprehension of breach of peace is sufficient but for continuing the proceeding up to its logical conclusion the possession of the aggrieved party must be also in dispute to the effect that either he was in possession on the date of preliminary order passed by Executive Magistrate under Sub-section (1) of Section 145 Cr.P.C. or at least it must be in dispute that aggrieved party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by such Executive Magistrate or after that date and before the date of his preliminary order. For continuing proceedings u/s 145 Cr.P.C. both the conditions precedent mentioned above must co-exist and in absence of any of the conditions referred above the proceedings are to be either dropped or to be quashed.

16. Now the facts and circumstances of the present case are to be tested on the anvil of aforesaid two conditions precedent enumerated in the proceeding paragraph of this order. It is true that in the present case there is apprehension of breach of peace between the parties but second limb of pre condition with regard to dispute about physical actual possession of respondents No. 2 and 3 are altogether missing in view of their own admission made in copy of plaint of civil suit No. 52/94 filed by them in the court of Munsif, Jaisalmer on 15.7.94, Anx. 1 from first information report lodged by them on 28.7.95, Anx.2, and

admission made by them in the written statement filed in response to notices issued to them under Sub-section (1) of Section 145 Cr.P.C. by the learned Executive Magistrate as discussed above, therefore continuing the present proceedings u/s 145 Cr.P.C. would amount abuse of process of court and as such liable to be quashed.

17. Consequently, the instant criminal misc. petition is allowed and the notice to proceed u/s 145 Cr.P.C. issued by the learned Executive Magistrate is hereby quashed in order to secure the ends of justice between the parties.