
(1985) 08 RAJ CK 0063

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 300/83

Shyam Sunder and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-08-1985

Acts Referred:

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

Citation : (1985) 2 WLN 94

Hon'ble Judges : Sobhag Mal Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sobhag Mal Jain, J.—This revision petition is directed against the order dated the 10th August, 1985 of the Sessions Judge, Jodhpur, quashing the proceedings initiated by the Assistant Collector and Executive Magistrate, Jodhpur u/s 145 of the Code of Criminal Procedure and also setting aside the order of attachment passed by the said Magistrate on April 20, 1985.

2. The dispute relates to the property known as Ashram in Shramik Pura, Jodhpur. Members of the Vishwakarma Samaj claim it to be the property of the Samaj and allege that Baba Bajarang Das was only a Pujari for the temple whereas Baba Bajrangdas claims the property in his own rights. The Vishwakarma Samaj calls the property as Chartravas.

3. The proceedings u/s 145 Cr.P.C. commenced on April 17, 1983 on the report of Baba Garibdas at the Police Station, Shashtrinagar, to the effect that Baba Bajrangdas had gone out of station on April 3, 1983 and that in his absence 30-40 persons came there and asked the complainant to leave the premises lest he would be killed. On April 19, 1983, Shyam Sunder petitioner also filed an application before the police that Baba Bajrangdas on investigation from Jadish, Sukan Singh and others wanted to unlawfully take possession of the temple which is used for the students both as school and Chhatravas. It was further

alleged that Baba Bajrangdas had gone some where on April 3, 1983 and that in his absence Baba Garibdas was creating trouble and did not allow the complainant and the members of the Samaj to enter the premises. After investigation, the police filed a complaint in the court of the Assistant Collector and Executive Magistrate Jodhpur on April 20, 1933 on the allegations that Baba Bajrangdas had left Jodhpur on April 3, 1983 and Baba Garibdas had also gone by locking six rooms of the temple and by handing over the keys to the police. It was alleged that in case party No. 1 consisting of Bajrangdas and others would try to enter the disputed property, the party No. 2 consisting of Shyam Sunder and others would put resistance and this dispute was likely to cause breach of peace. On this, the Executive Magistrate, by his order dated the 28th April, 1983, directed that the case be registered and notices issued to the parties. The Magistrate further directed that the disputed property be attached and the Tehsildar, Jodhpur be appointed as its receiver.

4. Aggrieved by this, the party No. 1, i.e., Bajrangdas and others preferred a revision petition before the Sessions Judge, Jodhpur, who by his order dated the 10th August, 1983 quashed the proceedings initiated u/s 145 Cr.P.C. and also set aside the order of attachment. The learned Sessions Judge came to the conclusion that the proceedings initiated by the Magistrate u/s 145 Cr.P.C. were uncalled for and invalid, and consequently the order of attachment passed u/s 146 Cr.P.C. was illegal and not justified. The learned Sessions Judge further directed that the possession of the property be handed over by the police to Baba Bajrangdas who was in possession of the same on April 3, 1983 and had given the keys to Baba Garibdas. Against this, the party No. 2, i.e., Shyara Sunder and others have come in revision to this Court.

5. I have heard Mr. M.C. Bhandari, learned counsel for the petitioners and Mr. Prakash Tatia, learned counsel for the respondents No. 2 to 4 and the Public Prosecutor for the State of Rajasthan. Mr. Tatia has urged that in respect of this very property a suit for injunction is pending in the court of Additional Munsif and Judicial Magistrate No. 2, Jodhpur--Suit No. 88 of 1982 Bajrangdas v. Vishwa Karma Boarding House and, therefore, the present proceedings u/s 145 of the Code were plainly not maintainable. We also urged that an interim injunction had also been passed by the Additional Munsif and Judicial Magistrate in regard to the possession of the disputed property. The copy of the said injunction order has, however, not been filed and nothing certain can be said about it except that if there is already an order--interim or final--of a Civil Court, the Courts of Criminal jurisdiction should stay their hands and respect the same till it is reversed, modified or changed by a Competent Court in appeal or revision.

6. There is, however, no dispute that a regular civil suit No. 88/82 is pending in the court of the Additional Munsif and Judicial Magistrate No. 2 Jodhpur in respect of this very property. It is now well settled that if a regular civil suit is already pending in a court of competent civil jurisdiction and all disputes regarding possession can be adjudicated and decided there, inter alia criminal proceedings

u/s 145 of the Code are obviously not maintainable. Any aggrieved party may approach the civil court itself for interim order viz. injunction, attachment or appointment of Receiver. See *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, . Therefore, in my view, the initiation of the proceedings u/s 145 Cr. PC when a civil suit in respect of the same property was pending was clearly unjustified and the said proceedings have rightly been quashed by the learned Sessions Judge.

7. Mr. M.C. Bhandari has however, contended that the revision petition before the learned Sessions Judge was directed only against the order of attachment and it was not open to the learned Sessions Judge to quash the entire proceedings initiated u/s 145 Cr. PC. This contention has no substance. A perusal of the revision petition filed before the learned Sessions Judge reveals that the prayer in the revision petition was not confined to the order of attachment only but a relief for quashing the proceedings u/s 145 Cr. PC was also claimed. Read as a whole the revision petition before the Sessions Judge disclosed that the revision petitioners in addition to the relief for quashing the order of attachment further prayed that the initiation of the proceedings u/s 145 Cr. PC may also be quashed.

8. Mr. Bhandari has next contended that having come to the conclusion that there was no apprehension of breach of peace the learned Sessions Judge while dropping the proceedings should have stopped then and there and should not have given a further direction that the possession of the property be delivered to Baba Bajrangdas. Mr. Bhandari in support of his contention has cited the case of *Kishan Sahai Vs. State*, In reply to this, Mr. Tatia, learned counsel for the respondents, has urged that it was an admitted (2) 1953 RL 5 position that Baba Bajrangdas was in possession of the property and that party No. 2 has nowhere said that they were in possession of the same. He has sought support of his contention by the cases of *Ramsukh v. The State* RLW 1953 503 and *Ram Lal Vs. Mangu*,

9. The cases of *Kishan Sahai Vs. State*, and *Ramsukh v. State* RLW 1953 503 were noticed and considered in a later decision of this court in *Ram Lal Vs. Mangu*, where I.N. Modi, J. after reviewing the case law of the various High Courts including this Court summed up the position as follows:

Whenever it is made to appear to a Magistrate or he comes to that conclusion suo moto that there never was any likelihood of there is no further likelihood of a breach of the peace relating to a dispute as respects land or other immovable property within the meaning of subSection (1) of Section 145 Cr.P.C., the Magistrate cannot but drop the proceedings under Sub-section (5) of that Section. He must of necessity remove the order of attachment in such a case which may have been passed by him earlier under Sub-section (4). The overwhelming trend of authority in the various High Courts seems to be that it is open to the Magistrate while dropping the proceedings and removing the attachment in such cases to make an incidental order to restore possession to the party or parties from whom it had been taken at the time of attachment, and

the Magistrate cannot possibly be said to be functus officio when he passes any such order.

It follows that while dropping the proceedings u/s 145 Cr.P.C., it is open to the Court to make a consequential or incidental order to restore possession to the party from whom it had been taken before the proceedings were started. In the present case admittedly the keys of the rooms in dispute were taken by the police from Baba Garibdas who was in occupation of the disputed property on behalf of Baba Bajrangdas. It was also not in dispute that Baba Bajrangdas was in possession of the property atleast on April 3, 1983. The learned Sessions Judge was, therefore, justified in restoring status quo as it prevailed when the proceedings were initiated. I may, however, make it clear that if there is already any interim order or injunction passed by the additional Munsif-cum-Judicial Magistrate No. 2, Jodhpur in regard to the property, the same will be given effect to till it is varied, modified or annulled by a Court of competent jurisdiction. I further leave it open to either party to move the Additional Munsif and Judicial Magistrate No. 2, Jodhpur in Civil suit No. 88/82 for appropriate orders, if so advised.

10. With these observations, the revision petition is dismissed.