

(1983) 04 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4354-M of 1982

Soni and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 13-04-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1983) 2 RCR(Criminal) 176

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

Bench : Single Bench

Advocate : Gian Singh, for the Appellant; H.L. Sarin for the Respondent No. 1 and Mr. M.L. Sarin for the Respondents No. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dewan, J.—This petition purports to have been filed u/s 482 of the Code of Criminal Procedure (for short, the Code) with the allegations which are these : The Station House Officer, Police Station Nuh, submitted a report on 26th September, 1980, in the Court of Sub-Divisional Magistrate, Nuh, to the effect that there is a dispute between the petitioners and Kishan respondent in respect of possession of land which is likely to result in breach of peace and prayed that proceedings u/s 145 of the Code be initiated and the land alongwith the crop standing on it, be attached till it is determined as to who is in possession of the said land. On 6th October, 1980, after the appearance of the parties, the learned Sub-Divisional Magistrate passed the order that there is apprehension of breach of peace over the possession of the land in dispute and hence the land alongwith the crops standing on it be attached. The petitioners went up in revision against that order and the same was dismissed by the Additional Sessions Judge, Gurgaon, on 3rd November, 1980. By means of the present petition, the orders of the two Courts below are sought to be quashed by invoking the provisions of Section 482 of the Code.

2. The present petition has to fail as being incompetent. It is an admitted fact

that the revision petition filed by the petitioners before the Additional Sessions Judge has been dismissed and the order of the learned Additional Sessions Judge clearly indicates that the merits of the case had been gone into at considerable length. A concurrent jurisdiction is vested under the law in the Court of Sessions and the High Court and the Sessions Judge can exercise powers of revision. It is provided in Section 397(3) of the Code that if an application for revision is made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. Obviously second revision petition could not have been filed in this case and that is why a recourse to Section 482 of the Code seems to have been made. However, such a course cannot be permitted in the garb of an application filed under some other provision of law. In this view I am fortified by a decision in Jagir Singh Vs. Ranbir Singh and Another, , wherein it has been observed as under :

The object of S. 397(3) is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of other authority. The language of S. 397(3) is clear and preemptory and it does not admit of any other interpretation.

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The revision application before the High Court cannot be treated as an application directed against the order of the Sessions Judge instead of as one directed against the order of the Magistrate. It is not permissible to do so. What may not be done directly cannot be allowed to be done indirectly ; that would be an evasion of the statute. It is a well known principle of law that the provisions of Act of Parliament shall not be evaded by shift or contrivance.

When the Sessions Judge refused to interfere with /the order of the Magistrate, the High Court's jurisdiction was invoked to avoid the order of the Magistrate, and not that of the Sessions Judge. The bar of S. 397 (3) was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Sessions Judge's order

During the course of arguments, it was contended on behalf of the petitioners that in fact there was no dispute of the type as envisaged by Section 145 of the Code between the parties in as much as one of the parties i.e. the petitioners were in clear, peaceful and continuous possession of the land in dispute and the same was found prima facie established by the Civil Courts. Though at first blush, there appeared to be force in the submission of Mr. Gian Singh, a closer scrutiny of the provisions of Sec. 145 and 146 exposes its unsoundness. In case of emergency, a Magistrate may attach the property at any time after making the preliminary order under S. 145(1). There is no express stipulation in S. 146 that the jurisdiction of the Magistrate ends with the attachment. Nor is it implied. Far

from it, the obligation to proceed with the enquiry as prescribed by S. 145, Sub-Sec. (4) is against any such implication. The only provision for stopping the provision and cancelling the preliminary order is to be found in S. 145(5) and it can be on the ground that there is no longer any dispute likely to cause a breach of peace. An emergency is the basis of attachment under the first limb of S. 146 (1) and if there is an emergency no one can say that there is no dispute likely to cause a breach of the peace. Even if the Civil Court had passed an order of injunction in favour of the petitioners regarding the same subject matter, between the same parties, the jurisdiction of the Criminal Court u/s 145 of the Code cannot be restrained. In this view I am fortified by a Supreme Court decision in R.H. Bhutani Vs. Miss Man J. Desai and Others, I do not find any illegality in the impugned orders justifying their quashing. In the circumstances, the present petition has no force and is accordingly dismissed.