

(1991) 05 AHC CK 0014

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4803 of 1991

Surendra Singh Chowdhary

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 482
Penal Code, 1860 (IPC) — Section 395

Citation : (1991) 15 ACR 395

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : Prakash Chandra, for the Appellant;

Judgement

G.P. Mathur, J.—This petition u/s 482 Code of Criminal Procedure has been filed for quashing the proceedings initiated u/s 145(1) Code of Criminal Procedure.

2. The applicant Surendra Singh Chowdhary claims that he is allottee of shop bearing No. 33 situate at Jaipur House, Agra from Agra Development Authority and that he took possession of the said shop on 18-4-1975. According to the applicant, he is regularly paying the rent of the shop to the Development Authority and he is running his law chamber in the premises. Since, Aditya Prakash Sharma opposite party No. 3 threatened to dispossess the applicant from the disputed shop, he filed a Civil suit bearing No. 260 of 1991 in the Court of Munsif, Agra against opposite party No. 3 for injunction restraining him from taking forcible possession of the shop in dispute and on 19-3-1991 an injunction order was passed in his favour, on 17-3-1991, two FIRs were lodged u/s 395 IPC at P.S. Loha Mandi, one by applicant and the other by opposite party No. 3, which were registered at Crime Nos. 74 of 1991 and 74-A of 1991. The police of P.S. Loha Mandi gave a report before the Additional City Magistrate, Agra on 18-3-1991 for initiating proceedings u/s 145 Code of Criminal Procedure. The police of P.S. Loha Mandi sealed the shop as there was tension between the parties who both claimed to be in possession of the disputed shop. The learned

Additional City Magistrate, 1st, passed a preliminary order on 20-3-1991 u/s 145(1) Code of Criminal Procedure and directed the parties to appear before him on 5-4-1991.

3. Although, in the present petition, a prayer has been made for quashing of the proceedings u/s 145 Code of Criminal Procedure, but at the time of hearing of application, the learned Counsel for the applicant made a statement that at this stage, he was only challenging the action of the police in locking the shop and getting it sealed. The learned Counsel also made a statement that he was not pressing the petition for any other relief, I am, therefore, confining my order to the limited question of locking of the shop by the police.

4. It is contended by the learned Counsel for the applicant that the police has no power to lock and get an immovable property sealed without any order of a competent Court. He has further contended even before submitting the report to the Magistrate on 18-3-91 for initiating proceedings u/s 145 Code of Criminal Procedure, the police has locked the shop and has sealed the same which will be evident from the report itself, copy of which has been filed as Annexure-9 to the petition. It is also contended that the applicant had moved an application before the learned Additional City Magistrate on 1-4-1991 for getting the shop opened, but no order has been passed on the same. The applicant was having his chamber in the said shop and on account of closure by the police, he was suffering great hardship as his books and files etc. have been locked.

5. On 16-4-1991, learned state counsel was directed to file counter affidavit and the case was ordered to be listed for admission on 2-4-1991. The state has, however not filed any counter affidavit till today. In my opinion, the contention raised by the learned Counsel is well founded. The police report dated 18-3-91 (Annexure-9 to the petition) shows that even before making the report to the learned Magistrate for initiating proceedings u/s 145 Code of Criminal Procedure, the police had sealed the shop in question. The Code of Criminal Procedure does not confer any such power upon the police to lock and seal an immovable property while submitting a report for initiation of proceedings u/s 145 Code of Criminal Procedure. The learned Magistrate after passing preliminary order u/s 145(1) Code of Criminal Procedure could have passed an order of attachment u/s 146(1) Code of Criminal Procedure, if he was satisfied that the case was one of emergency. However, in the present case, even before the Magistrate passed the preliminary order u/s 145(1) Code of Criminal Procedure on 20-3-91, shop was locked and sealed by the police. This action of the police is wholly illegal and without jurisdiction.

6. The application is, accordingly allowed and the opposite party No. 1 and 2 are directed to open the shop No. 33, situate at Jaipur House, Agra. It may be clarified that the order passed by me will not affect any order passed either by the learned Magistrate in proceedings u/s 145 Code of Criminal Procedure or by the Civil Court in Suits filed by either party or by some other Competent Court. In case, any order of attachment has been passed by the learned Magistrate u/s

146(1) Code of Criminal Procedure or by the Civil Court" in the suit, the same shall be given effect to. It may also be clarified that in this petition, I have considered only a limited question as to the action of the police in locking the shop or getting it sealed even before submitting report for initiation of proceedings u/s 145 Code of Criminal Procedure. I am expressing no opinion on the merits of proceedings which have been initiated u/s 145 Code of Criminal Procedure by the Additional City Magistrate, Agra.

7. With these observations, the present application is finally disposed of.