
(1996) 02 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17007-M of 1995

Surinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 12-02-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145(1), 146(1), 397(2)

Citation : (1996) 113 PLR 203 : (1996) 2 RCR(Criminal) 154

Hon'ble Judges : K.K. Srivastava, J

Bench : Single Bench

Advocate : R.S. Cheema and Pankaj Bhardwaj, for the Appellant; T.P.S. Mann, for the Respondent

Judgement

K.K. Srivastava, J.—This petition u/s 482 of the Code of Criminal Procedure is directed against judgment dated 20.9.1995 passed by Additional Sessions Judge, Jalandhar, dismissing the Criminal revision No. 3 of 1994 filed by Surinder Singh and three others against State and another. The said criminal revision arose out of order dated 23.6.1994 passed by Sub-Divisional Magistrate, Phillaur whereby the said Executive Magistrate ordered for initiation of proceedings u/s 145 of Code of Criminal Procedure and by the same order appointed Tehsildar, Phillaur as a Receiver of the disputed land u/s 146 of Code of Criminal Procedure. The petitioners have also prayed for quashing of the Kalandera submitted by police, a copy of which is Annexure P4 and also said order dated 23.6.1994 passed by the Sub-Divisional Magistrate, Phillaur, a copy of which has been placed on record and is Annexure P.6.

2. At the time of admission of this petition the notice was ordered to be issued, after hearing the learned counsel for the petitioners, to the respondents only in so far as this petition related to the judgment of the learned Additional Sessions Judge, Jalandhar passed in the said criminal revision. This petition is, thus, confined only to examine the legality of the judgment passed by the learned Additional Sessions Judge in criminal revision. The respondents put in

appearance in response to the service of the notice.

3. I have heard the learned counsel for the petitioners and learned counsel for the respondents. I have also perused the record of the case.

4. The learned counsel for the petitioners submitted that the learned Additional Sessions Judge, Jalandhar has relied on a Division Bench judgment of this Court reported in Parkash Singh and Ors. v. Pritam Kaur 1985 (1) C.L.R. 339 and has held that a revision filed against an order passed u/s 146 of Code of Criminal Procedure was in the nature of an inter-locutory order within the meaning of Section 397(2) of Code of Criminal Procedure and as such, the revision against such an order was not competent.

5. Learned Additional Sessions Judge has cited a number of authorities including a Full Bench case of Brij Lal Chakoo, etc. Vs. Abdul Ahad Nishati and Others etc., wherein it was held by the High Court of Jammu and Kashmir that an order passed u/s 145(1) of Code of Criminal Procedure cannot be said to be merely an interlocutory order and a revision against the said order was not barred under the provisions of Cr.P.C. He also cited the authority reported in the case of Kashni Ram v. Haryana State and Ors. 1983 (2) C.L.R. 572 wherein it has been held that a revision against a preliminary order u/s 145(1) of Code of Criminal Procedure read with Section 146 of Code of Criminal Procedure was maintainable. He has also noticed the authorities reported in Gurdial Singh v. Dharampal Singh 1990 (1) C.L.R. 47, Kartar Singh and Ors. v. Gurmukh Singh etc. 1992 (1) RCR 343 and a recent authority reported in the case of Balwant Singh v. State of Punjab, 1995 (1) C.L.R. 628 wherein it was held that when status quo has been ordered by the Civil Court, proceedings u/s 145 of the Code of Criminal Procedure could not be continued. After noticing these authorities the learned Additional Sessions Judge observed as under:-

"However, as stated above in view of the Division Bench Ruling of the our own High Court, and some other rulings of our own High Court, revision in such matters was not competent. In case the revision petitioners have any grouse against the impugned order they may be within- their rights to seek appropriate remedy from the competent court under the law but stated above the impugned order was in the nature of an interlocutory order and in view of the legal position discussed above, the revision petition was not competent and was liable to be dismissed on that ground. Consequently, the revision petition is dismissed being not maintainable. The same, however, is without prejudice to the rights of the revision petitioners to seek appropriate remedy according to law. File be consigned to record room."

6. Learned counsel for the petitioners contended that the view taken by the learned Additional Sessions Judge regarding the non-maintainability of the criminal revision against the order passed u/s 145(1) of Code of Criminal Procedure is apparently incorrect and against the settled law. The argument of the learned counsel for the petitioners is that an order passed by the Executive

Magistrate u/s 145(1) of Code of Criminal Procedure is amenable to the revisional jurisdiction because it is the satisfaction of the learned Magistrate about the existence of an apprehension of breach of peace relating to an immovable property and that gives him the requisite jurisdiction to initiate the proceedings u/s 145(1) of Code of Criminal Procedure. He has contended that since the satisfaction of the learned Executive Magistrate is based upon the material furnished before him either in the Kalandera submitted by the Police or from any other source, the same is a subject matter which has to be seen and considered for examining whether the Executive Magistrate could under law assume jurisdiction to initiate the proceedings, u/s 145(1) of Code of Criminal Procedure. Since the order passed u/s 145(1) of Code of Criminal Procedure touches the very jurisdiction of the Executive Magistrate, a revision against such an order would clearly be permissible in law.

7. A learned Single Judge of this Court had referred the following question for being considered by a larger Bench. (Question). Is the order of attachment of immovable property u/s 146(1) of Code of Criminal Procedure, 1973, interlocutory in nature within the meaning of Section 397(2) of the said Code? The Division Bench in the said case of Kartar Singh (Supra) considered the said point referred to it and after considering the various authorities and noticing the provisions of Section 145 and 146 of Code of Criminal Procedure concluded as under.

"To conclude, the answer to the question posed at the very outset, is rendered in the affirmative and is held that an order of attachment of an immovable property u/s 146(1) of the Code is interlocutory in nature within the meaning of Section 397(2) of the Code and consequently, no revision against the same is maintainable."

8. It may be mentioned that the Division Bench while giving the answer to the question referred to it considered besides the authorities cited before it, the Full Bench judgment of the High Court of Jammu and Kashmir in the case of Brij Lal Chakoo (Supra) and concurred with the view expressed by the said Full Bench. The Full Bench aforesaid held by the majority view that an order made u/s 145(1) of Code of Criminal Procedure cannot be said to be merely interlocutory order and the revision against such order is not barred. The majority view of the Full Bench held that:

"The assumption of jurisdiction by the Magistrate u/s 145 and the making of the preliminary order under that section cannot be said to be a mere interlocutory order. The foundation upon which the jurisdiction of the Magistrate to proceed u/s 145 is based is the satisfaction of the Magistrate that there is a dispute relating to possession of immovable property, and that there is an apprehension of breach of the peace on the spot."

9. Therefore the majority view of the Full Bench holds the maintainability of a revision against the order passed u/s 145(1) of Code of Criminal Procedure and

the Division Bench aforesaid has relied on the said Full Bench. The Full Bench has no doubt taken the view that the revision against an order passed by the Magistrate regarding the attachment of the subject matter of the dispute is made at an interim stage of the proceedings and the same is an interlocutory order and a revision against the same is barred by the provisions of the Code of Criminal Procedure.

10. The learned Additional Sessions Judge while deciding the revision has committed error-in-law in holding that the revision filed against the order passed u/s 145(1) of Code of Criminal Procedure was an interlocutory order and a revision against the same was barred u/s 397(2) of the Code. This at least is not the view expressed by the Division Bench of this Court in the case of Kartar Singh (Supra).

11. The Hon'ble Supreme Court also considered the point whether an order passed by the Magistrate u/s 146(1) of Code of Criminal Procedure is an interlocutory order, in the case of Dharampal and others Vs. Smt. Ramshri and others, . It has been held that it is obvious from sub-section (1) of Section 146, that the Magistrate is given power to attach the subject of disputes "until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof." The determination by a competent Court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a receiver in respect of the subject matter of the dispute pending the final decision in the suit. The moment the competent Court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency between the order passed by the Civil Court and the order of attachment passed by the Magistrate. The proviso to sub-section (1) of Section 146 itself takes cognizance of such a situation when it states that "magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of any breach of peace with regard to the subject of dispute." It was held further that the fact that the Magistrate can withdraw the order of attachment passed by him even during the pendency of the dispute in the Civil Court is made further clear by the provisions of sub-Section (2) of Section 146. When the Civil Court appoints a receiver, the order of attachment passed by the Magistrate necessary gives way to the order of the Civil Court appointing the receiver. It is only when the Civil Court does not appoint the receiver that the Magistrate may make arrangements for looking after the property or even appoint a receiver himself. However, even when such a receiver is appointed and the Civil Court subsequently appoints a receiver of its own, the Magistrate has to order the receiver appointed by him to hand over the possession of the subject dispute to the receiver appointed by the Civil Court and discharge the .receiver appointed by him.

12. In view of the forging discussion, it is abundantly clear that while a revision

against an order passed u/s 145(1) of Code of Criminal Procedure is illegally maintainable and is not barred u/s 397(2) of the Code of Criminal Procedure as the same is not an interlocutory order and is in fact an order which touches the jurisdiction of the Magistrate to initiate the proceedings, an order passed u/s 146(1) of the Code is undoubtedly an interlocutory order and the same is not amendable to revisional jurisdiction and would be barred u/s 397(2) of Code of Criminal Procedure. That being so, the learned Additional Sessions Judge committed an error-in-law in not examining the legality and validity of the order passed by the learned Executive Magistrate u/s 145(1) of the Code and by holding that the order passed u/s by the learned Executive Magistrate u/s 145(1) of the Code was also an interlocutory order. The view expressed by the learned Additional Sessions Judge regarding the revision against the order passed u/s 146(1) of the Code being an interlocutory order and barred u/s 397(2) of the Code is a valid and legal order. The petition thus succeeds in part and the impugned judgment and order passed by the learned Additional Sessions Judge, a copy of which is Annexure P.7, is set aside in so far as the maintainability of revision filed against the order of the learned Executive Magistrate passed u/s 145(1) of Code is concerned. The revision against the order passed by the learned Magistrate u/s 146(1) of the Code has rightly been dismissed as being not maintainable. The criminal revision aforesaid is sent back to the learned Additional Sessions Judge, Jalandhar with the direction to hear the parties on merits regarding the validity and legality of the order passed by the Executive Magistrate u/s 145(1) of the Code only and decide the revision expeditiously and preferably within two months from the dated receipt of a copy of order of this Court or a certified copy thereof from any of the parties. The parties are directed to appear before the learned additional Sessions Judge, Jalandhar on 22.2.1996 parties are directed to appear before the learned Additional Sessions Judge, Jalandhar on 22.2.996.