

(1991) 12 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 234 of 1991

Suwa and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

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

Citation : (1991) 2 RLW 448 : (1992) 1 WLC 74 : (1991) 2 WLN 257

Hon'ble Judges : Mohini Kapoor, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohini Kapur, J.—This revision petition has been preferred against the order dated 5th December, 1991 passed by the Additional District and Session Judge, Jaipur, District by which he has accepted the revision of the non-petitioner and set aside the order of the S.D.M. Sambher Lake dated 13-10-91 passed u/s 146 Cr.P.C.

2. The dispute related to 302 Bighas of land in village Panwa Kalan bearing Khasra Nos. 194,196,197 and 198. Some incident occurred on 13th October, 1991 on basis of which the Station House Officer, Police Station Dudu submitted a report before the S.D.M. Sambher Lake at the site itself and the S.D.M. passed an order attaching the standing crops on the disputed fields. The proceedings u/s 145 Cr.P.C. were drawn later. The learned Additional Sessions Judge held that the satisfaction of the Magistrate about the existence of a dispute likely to cause breach of peace is to be recorded first and only after that an order u/s 146 Cr.P.C. can be passed. As this Procedure had not been followed and there was no material on basis of which satisfaction could be recorded, the order passed u/s 146 Cr. P.C was set aside.

3. The learned Counsel for the petitioner has contended that the Additional Sessions Judge has interfered with the order of the learned S.D.M. on basis of

technicalities which is not proper. According to him, the land in dispute was a Charagah land for several years and it was in the year 1984 that the present non-petitioners obtained a Parcha Khatedari in their name. According to the learned Counsel for the petitioner, ever since there is a dispute between the parties and earlier also proceedings u/s 145 Cr.P.C. were taken in which fraudulent compromise was shown as the some other persons, not the petitioners admitted the compromise. It is contended that there is every likelihood of breach of peace and when this is the situation, the property can be attached and receiver can be appointed.

4. Reliance has been placed on Ram Prasad and Ors. v. State of Raj. and Ors. 983 RLR 751 in this case it was held that when preliminary order is drawn by Magistrate and notices are issued to the parties and simultaneously an order of attachment is passed than no error is committed by Magistrate. In Rameshwar Lal v. The State of Rajasthan RLW 1987 746. It is held that where there are chances of bloodshed and the civil court said that it was not possible to decide which party was in possession, it is the duty of the court to take a preventive action, In Narsingh v. Dhanraj and Ors. 1984 RLR 98 the Magistrate attached the fields by acting upon police report about the emergency and breach of peace. The order was held to be justified and the order of the Sessions Judge was set aside.

5. As against this, the learned Counsel for the non-petitioners has contended that admittedly they have Khatedari of the disputed land in their name from the year 1984 and now civil proceedings in respect of this land are pending. It is contended that the petitioners have not claimed that the crop standing on this field was cultivated by them and admittedly the crop was shown by the non-petitioners and they have been in possession at least for the last four months. It is contended that earlier also, proceedings u/s 145 Cr.P.C. were drawn then proceeds of the sale after appointment of the receiver were given to the non-petitioners. Relying upon Asgar AH v. The State of Rajasthan RLW 1985 571. it is contended that an order u/s 146(1) Cr.P.C. can be passed immediately after passing the order u/s 145(1) Cr.P.C. and it is not necessary that two separate orders should be drawn. The two orders can be passed one after other signed at one place and the only requirement is that the order u/s 146(1) Cr.P.C. should be passed at any time after making order u/s 145(1) Cr.P.C.

6. In this petition, the matter cannot be re-appreciated from the initial stage and it can be said that the scope is very limited. Certain circumstances are already before me which are that the Parcha of the land stands on the name of non petitioners and the crop of the field was also cultivated by this party. Why the dispute has arisen cannot be said but the dispute between the parties is pending before the revenue courts. It is also borne out from the record that the S.D.M. Sambher Lake passed an order attaching the property on the complaint made by Station House Officer, Police Station, Dudu at the site, and at that time proceedings u/s 145 Cr.P.C. had not been drawn. This is not a case where the

orders u/s 145(1) Cr.P.C. and 146 Cr.P.C. have been made simultaneously. The attachment order has been passed prior in time to the order issuance of notices to the non-petitioners. Recording of satisfaction about the existence of dispute which may lead to breach of peace is not in specific terms and even before recording the satisfaction, attachment order has been passed. This procedure is illegal and the attachment order passed in this illegal manner has been rightly set aside. It may also be mentioned here that the litigation between the parties is pending before the revenue court and both the parties should approach the revenue court for purposes of any order which they want in their favour rather than raise a dispute and causes breach of the peace. Both the parties should seek orders from the revenue court and not take up the law in their own hands. The matter can also be discussed in pursuance of the notice issued u/s 145(1) Cr.P.C.

7. In this petition, I see no reason to interfere with the order passed by the learned Addl. Sessions Judge and this petition is hereby dismissed.