
(1986) 08 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3059-M of 1986

Tara Singh

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

Citation : (1986) 2 AICLR 382

Hon'ble Judges : M.M.Punchhi, J

Advocate : S.S. Rathore, Hemant Kumar Gupta, Mani Ram, Advocates for appearing Parties

Judgement

Madan Mohan Punchhi, J. (Oral)

1. This is a petition under Section 482 of the Code of Criminal Procedure complaining that the operative order of the SubDivisional Executive Magistrate, Thenesar, whereby the land, in dispute, lies attached and in possession of a Receiver, is nothing but an abuse of the process of Court, resulting in manifest injustice.

2. The broad facts giving rise to his litigation are that there exists in village Nasi, Tehsil Thenesar, District Kurukshetra, a piece of agricultural land owned by the Punjab Wakf Board. The petitioner Tara Singh claims to be in possession thereof for many years, which is supportive from the revenue records. The respondent Surjit Singh, on the other hand claims that he is a lessee of the said land, had been paying its lease money and cultivating it through Tara singh petitioner who was his servant (Sanjhi). Thereupon, a dispute arose between the two. Tara Singh petitioner rushed to the civil Court to assert his possessory title and claimed an injunction and initially obtained an ex parte temporary injunction which was later confirmed in the presence of the parties. Surjit Singh respondent too rushed to the civil Court for a similar relief but he could obtain only an order of status quo regarding possession. The suits of both the parties were statedly pending in the civil Court.

3. In the meantime, the police reported the matter to the learned Magistrate under Section 143, Code of Criminal Procedure. Proceedings were initiated and an order under Section 146, Code of Criminal procedure, was passed and the land was put in possession of a Receiver. Thereafter, on 16.4.1986, the learned Executive Magistrate passed translated the following order :

"I have considered the arguments of learned counsel of both the parties and documents placed on the file. Disputed land is owned by Punjab Wakf Board, regarding which there can arise an apprehension of breach of peace between the parties at any time. Therefore, the land in dispute, has been rightly attached under Section 146 Cr.P.C. Civil suits are pending between the parties in the Civil Court, in which ad interim injunction has been granted. Keeping all this in view till the decision by the civil Court, the proceedings in the kalandra are stopped. After the decision of the civil Court, if any party wants, he can get the case revived after moving an application to that effect."

By virtue of the above order, proceedings under Section 145 Cr.P.C. have been stopped and apparently the order under Section 146 Cr.P.C. has been kept alive, for it has been said that the land, in dispute has rightly been attached as there was apprehension of breach of peace. Now, whether in the circumstances the Magistrate could keep alive the proceedings under Section 146 Cr.P.C. is the question to be determined. Vide order Annexures P.4 and P.5 dated 2.4.1986 and 2.4.1986, respectively, the attachment has been effected under Section 146 Cr.P.C. simultaneous to the initiation of proceedings. It is not clear from these orders whether the learned Magistrate considered the case to be one of emergency so as to invoke Section 146 Cr.P.C. While passing orders of 14.4.1986, the Magistrate did not indicate that he had made a decision that none of the parties was in possession of the property on the date of the passing the preliminary order or that he was unable to satisfy himself as to which of the parties was then in such possession of the subject, in dispute. Thus, the order under Section 146 Cr.P.C. remains vague. There is no indication in the order as to when it would terminate. Section 146 Cr.P.C. clearly postulated that the attachment effected by a Magistrate can continue until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. All what seems is that the Magistrate was inclined to give due weight to the pendency of the civil litigation and the injunction orders operative between the parties and, on the strength thereof, has put proceedings under Section 145 Cr.P.C. in hibernation. In that event, the order of the learned Magistrate keeping the attachment under Section 146 Cr.P.C. intact does not appear to me logical. If the civil Court decides the question of possession in favour of one party or the other, there is nothing for the Magistrate to revive under Section 145 Cr.P.C. Hibernating those proceedings thus is just a pretence to keep operative the order under Section 146 Cr.P.C. If the former has no chance of revival, the latter has no cause for survival. On the other hand, both the parties have strongly banked upon the interim civil Court orders. The order under Section 146 Cr.P.C. in these circumstances, must bow down in favour of

the civil Court order and that must be vacated so that the civil Court order are put to effect. It is ordered accordingly. It is left open to the learned Magistrate to resort to proceedings under section 107, Cr.P.C. which, at one instance, he had already done, if breach of peace is apprehended.

4. Thus for the foregoing reasons, this petition is allowed and the order of attachment of property, in dispute, is vacated.