
(2008) 01 MP CK 0033
In the Madhya Pradesh High Court

Yashwant

APPELLANT

Vs

Sachin and Others

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

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

Citation : (2008) ILR (MP) 14 : (2008) 2 MPHT 135

Hon'ble Judges : Subhash Chandra Vyas, J

Bench : Single Bench

Judgement

S.C. Vyas, J.—Petitioner has challenged the order dated 29-6-2007 passed in Criminal Case No. 466/07 by Sub Divisional Magistrate, Indore, appointing the receiver in respect of a disputed property, which is a Church, known as "Masih Mandir" situated at 61, Shradhanand Marg, Indore. A criminal revision was also filed by the petitioner before 9th ASJ, bearing Cr. R. No. 573/07, which was dismissed by that Court on 11-7-2007, confirming the order passed by learned Sub Divisional Magistrate with certain modifications.

2. Learned Counsel for the petitioner, Sr. Advocate Shri Jai Singh assisted by Shri A.S. Rathore, Advocate submitted that the disputed property is a Church known as "Masih Mandir" and was constructed by Presbyterian Church in the year 1926. The Presbyterian Society was constituted in the year 1885 and the then Governor General, Central India allotted a piece of land to this society for the purpose of construction of a Church and with the help of donations given by members of the society, the Church was constructed. From the year 1926 Presbyterian Church, Indore is conducting religious activities in the Church and is maintaining the same. It has been submitted that respondent No. 1, obtained permission for performing prayers in the said Church from the Presbyterian Church and for that purpose license fee was also being paid by them. It has been submitted that earlier also dispute was raised by some persons regarding the same Church, regarding which a civil suit was filed, which was ultimately dismissed. It has also been submitted that proceedings u/s 145 of Cr.PC were also filed by Police

Sanyogitaganj in the year 1988 and in those proceedings ultimately in criminal revision petitioner and Secretary of Presbyterian Church were found competent persons to have possession over the property of the Church. It has also been submitted that learned Magistrate has not given any finding to the effect that there was an emergence situation justifying immediate attachment of the property and appointment of receiver. It has been submitted that the property is a religious place and is being used by the members of Christian Community to observe prayer etc. every day. It has also been submitted that the order which has been passed by learned Magistrate is not at all a speaking order and nothing has been mentioned in it to show that on what basis learned Magistrate was satisfied that it is a fit case in which order u/s 146 of Cr.PC should be passed.

3. Whereas, learned Counsel for the respondents supported the impugned order and submitted that there was serious dispute regarding the property between the parties and looking to that dispute if order of attachment and order of appointment of a receiver has been passed by learned Magistrate, then there is no illegality in it and it is not required to be interfered with.

4. I have considered the rival contentions raised by both parties and perused the record of the Trial Court as well as the impugned order. From the impugned order passed by learned Sub Divisional Magistrate on 29-6-2007 it appears that complaint u/s 145 of Cr.PC was filed by Police Sanyogitaganj before learned SDM on which notices were issued u/s 145(1) of Cr.PC to both the parties, thereafter all of a sudden respondent Party No. 1 filed an application u/s 146 of the Code on 15-6-2007, praying for an appointment of the receiver. That application was sent for inquiry to the concerning police station. A report was sent by Police Sanyogitaganj and then the impugned order was passed. Neither the report of the Police Sanyogitaganj nor the order passed by learned Magistrate show any emergency for attaching the disputed property. It appears that the impugned order has been passed only on the ground that there was an apprehension of breach of peace between the parties. Apprehension of breach of peace simplicitor cannot be said to be a valid ground for attachment of a property and thereby depriving the lawful possession holder from the possession of the property. The object of attachment is to keep the property custodia legis so as to prevent the contesting parties from scramble for possession to obtain actual possession of subject of dispute during pendency of the proceeding. In the impugned order learned Magistrate has simply mentioned that in order to maintain peace between the parties it is necessary to appoint a receiver. It has also been mentioned that the petitioner herein who was Party No. 2 before learned Magistrate failed to show during the course of arguments or in his reply as to why receiver should not be appointed and mentioning only these two reasons the impugned order has been passed.

5. I am of the considered view that order for attachment of the property can only be passed when after passing order u/s 145(1) of Cr.PC the Magistrate considers the case to be one of emergency or if it is decided by the Magistrate that none of

the parties was then in such possession as is required to be u/s 145 of the Cr.PC or if the Magistrate is unable to satisfy himself as to which of them was then in such possession of the subject matter of the dispute, then only he may attach the subject of dispute, until the Competent Court has determined regarding the person entitled to have possession thereof. The provisions of Section 146 of the Cr.PC are very clear in this regard and at the threshold on the inquiry, at the initial stage of the matter it is necessary to record reasons of satisfaction to the effect that it is a case of emergency. Such reasons are lacking in the impugned order passed by learned Magistrate and, therefore, the order is not sustainable in law. In this regard reported judgment of Orissa High Court in the case of Ramani Mohan Mandal and Ors. v. Santosh Kumar Mandal and Ors. 1991 (3) Crimes 549, is useful to be referred. This judgment was passed by Hon"ble Shri Justice Arijit Pasayat, when His Lordship was Judge of that High Court. It has been observed in Paragraph No. 4 of that judgment as under:

Paragraph No. 4. A question that further requires adjudication is whether necessary ingredients existed for exercise of power u/s 146(1). Report to this provision cannot be a mechanical act. It presupposes satisfaction as to whether emergency exists which notwithstanding the order u/s 145(1) warrants an order of attachment of subject of dispute. The object of attachment is to keep the property custodia legis so as to prevent the contesting parties from scramble for possession to obtain actual possession of subject of dispute during pendency of the proceeding. In a given case, an order of attachment may deprive the rightful owner of his right of possession of subject of dispute. This power is, therefore, to be exercised with due care and caution and with a judicial approach, as indicated above same is not a mechanical act. Perusal of the order impugned does not show that the learned Magistrate considered these aspects. Therefore, while confirming the preliminary order u/s 145(1) of the Code, the residual order u/s 146(1) of the Code as contained in the impugned order is set aside. The learned Magistrate is free to exercise such jurisdiction u/s 146(1) if situation and circumstances so warrant.

6. Similarly in the case of Kailash Yadav and Ors. v. State and Anr. 1993 (2) Crimes 596, Patna High Court in Paragraph No. 4, has observed as under:

Para No. 4. According to Section 146(1) of the Code, the Magistrate can attach the disputed land only in case of emergency. In the present case, he has attached the land only on the ground that there was an apprehension of breach of peace between the parties. Accordingly, the requirement of the aforesaid section is lacking in this case. In that view of the matter the impugned order is set aside.

7. I respectfully agree with the opinion expressed by both the High Courts. In the facts of the present case also there is nothing to show that it was such a case of emergency in which it was necessary to pass an order of attachment of disputed Church and to appoint a receiver.

8. Therefore, the petition is allowed and the order passed by learned Magistrate is hereby quashed. However, it is made clear that learned Magistrate is free to exercise jurisdiction u/s 146(1) of Cr.PC, if situation and circumstances so warrant.

The petition is accordingly disposed of.