

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 7643 of 2022

Applicant :- Dal Chand

Opposite Party :- Aparna Yadav,S.D.M. And 4 Others

Counsel for Applicant :- Prakash Chandra Pathak

Counsel for Opposite Party :- Avadh Pratap Singh Shishodia,Rahul Kumar Tyagi

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri Prakash Chandra Pathak, learned counsel for the applicant and Sri Rahul Kumar Tyagi, learned counsel appearing for opposite party nos. 3 and 4.
2. This contempt application has been filed for punishing the opposite party for violating the order dated 18.07.2022 passed in Application U/S 482 No. 20681 of 2021.
3. The brief facts of the case is that against the opposite party nos. 3 to 5 the proceedings under Section 145/146 Cr.P.C. were initiated by the applicant and the said proceedings were allowed vide order dated 22.10.2020 by the Sub Divisional Magistrate, Khekhra. The said order was put to challenge before the revisional court in Criminal Revision No. 83 of 2020 and the revisional court upheld the order passed by the Sub Divisional Magistrate vide order dated 24.03.2021 passed by the Additional Sessions Judge/Special Judge, SC/ST Act, Baghpat.
4. Aggrieved by both the orders an application being Application U/S 482 No. 20681 of 2021 was preferred by the Rajendra Singh, opposite party no. 3, before this Court. This Court on 18.07.2022 while staying both the orders passed by the Additional Sessions Judge/Special Judge, SC/ST Act as well as the Sub Divisional Magistrate, Khekhra under Section 145 Cr.P.C. passed the following order;

“Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The instant application under Section 482 of Cr.P.C. has been filed for quashing/set aside the order dated 24.03.2021 passed by Addl. Sessions Judge/Special Judge, SC/ST Act, Baghpat in Criminal Revision No.83 of 2020 arising out of Case No.RST 14/2008-2009, under Section 397 IPC, Police Station-Khekhra, District-Baghpat as

well as order dated 22.10.2020 passed by Sub-Divisional Magistrate, Khekhra in RST 14/2008-2009 under Section 145 of Cr.P.C., Police Station-Khekhra, District-Baghpat.

Learned counsel for the applicant submits that the proceedings under Sections 145 and 146 Cr.P.C. were initiated against the present applicant with respect to Khasra No.829/1 admeasuring area 1.219 hectares situated at Mauja Ravan alias Badagaon, Tehsil-Khekhra, District-Baghpat. He submits that, in fact, with respect to aforesaid khasra No.829/1, a civil suit was filed by the present applicant which was decided on 07.08.1986 in favour of the present applicant and, thereafter, an appeal was filed against the order dated 07.08.1986, wherein, no notice was served upon the present applicant and the appeal was decided on the premises that there was a compromise entered into between the parties. Against the aforesaid, he filed a case bearing No.132 of 2008 (Rejendra Vs. Basant and another), which is pending consideration before the Civil Judge, Jr. Division, Baghpat. He added that, later on, the defendant-respondent, filed a case before the Magistrate under Section 145 Cr.P.C. wherein, the same was decided on 22.10.2020 and the following order was passed:-

"पत्रावली पर उपलब्ध साक्ष्यों एवं उप निरीक्षक थाना खेकडा की आख्या दिनांक 07.06.2008 के आधार पर भूमि खसरा संख्या 829/1 क्षेत्रफल 1.219 है० स्थित ग्राम रावण उर्फ बड़ागांव तहसील खेकडा जनपद बागपत जिसके पूरब में खेत बालकिशोर पुत्र दलेराम, पश्चिम में चकरोड, उत्तर में खेत दयानन्द पुत्र गंगाचरण तथा दक्षिण में नाली व खेत जसवन्त पर प्राथमिक आदेश व उससे दो माह पूर्व द्वितीय पक्ष डालचन्द का कब्जा निर्णित किया जाता है। प्रथम पक्ष को द्वितीय पक्ष के कब्जे में उस समय तक हस्तक्षेप करने से निषेध किया जाता है। जब तक द्वितीय पक्ष को विधि के सम्यक अनुक्रम में बेदखल न कर दिया जावे। पत्रावली बाद आवश्यक कार्यवाही दाखिल दफतर हो।"

Referring the aforesaid order, he submits that order passed by the Magistrate is erroneous and unlawful as while invoking the jurisdiction under Section 145 of Cr.P.C., the Magistrate has decided the possession of the land in question which is beyond its jurisdiction. He further added that in the order dated 22.10.2020, the injunction was also granted, which could not have been granted by the court concerned as per the settled proposition of law. He added that he filed a revision wherein, Revisional Court has also not dealt with the legal question and has decided the matter in a very cursory manner and has rejected the revision of the present applicant.

He further argued while referring the judgment of a co-ordinate Bench of this Court dated 31.03.2022 passed in Criminal Revision No.431 of 2000 (Jitendra Kumar Vs. Anil Kumar and another) and has referred para 9 and 10, which reads as under:-

(9) Hon'ble Supreme Court in the case of Amresh Tiwari vs. Lalta Prasad Dubey and another reported in (2000) 4 SCC 440 relying on the ratio of Ram Sumer's case (1985 SCC (Cri) 98) has held that where civil suit for possession or declaration of the title in respect of same property is pending, the proceedings under Section 145 Cr.P.C. are liable to be discontinued. The relevant part of para 14 of the Amresh Tiwari's judgement is extracted below:-

"We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate."

(10) In view of the aforesaid settled law, since the proceedings regarding possession or declaration of the title in respect of the same property are pending under the Consolidation of Holdings Act before this Court, wherein question of title adjudicated by the Consolidation Courts, namely, Consolidation Officer, Settlement Officer of Consolidation and Deputy Director of Consolidation is to be adjudicated, it will not be proper to allow the proceedings under Section 145 Cr.P.C. to continue at this stage.

Referring the aforesaid, he submitted that in the aforesaid case, this Court has decided the matter and held that in case of pendency of a civil suit, the proceeding under Section 145 Cr.P.C. cannot be initiated and further the Magistrate is not empowered to decide an ownership or the possession of any land under the provisions of Section 145 Cr.P.C.

Concluding his argument, he submitted that, in fact, the order passed by the Magistrate as well as the Revisional Authority are erroneous and patently illegal and are liable to be set aside.

Matter requires consideration.

Let notices be issued to respondent nos.2, 3 and 4, returnable at an early date. Steps be taken within a week.

Learned AGA as well as learned counsel for the respondent nos. 2, 3 and 4 may file their counter affidavits.

Put up this case in the week commencing 05.09.2022.

In the meantime, the proceeding of order dated 24.03.2021 passed by Addl. Sessions Judge/Special Judge, SC/ST Act, Baghpat in Criminal Revision No.83 of 2020 arising out of Case No.RST 14/2008-2009, under Section 397 IPC, Police Station-Khekra, District-Baghpat as well as order dated 22.10.2020 passed by Sub-Divisional Magistrate, Khekra in

RST 14/2008-2009 under Section 145 of Cr.P.C., Police Station-Khekra, District-Baghat, shall remain stayed.

Learned counsel for the applicant undertakes that he will provide a copy of this Application to the Office of Government Advocate within a period of two weeks. ”

5. From perusal of the order passed by this Court, it transpires that only the proceedings under Section 145 Cr.P.C. was stayed by this Court.

6. Learned counsel for the applicant has submitted that the order passed by this Court has been violated by the opposite party nos. 3 to 5 and had destroyed the crops standing over the land in dispute. According to him the land is still in the name of the applicant and the opposite parties are not in possession and could not have destroyed the crops which were standing over the land in dispute.

7. Learned counsel appearing for the opposite parties has submitted that a civil suit arose between the parties and an injunction application was moved which was dismissed against which an appeal was preferred which was also decided on the basis of compromise entered between the parties. According to him the matter is still pending and proceedings under Section 145 Cr.P.C. had stayed by this Court and simply on the basis of mutation entry made under Section 34 of U.P. Revenue Code 2006 present contempt application has been preferred by the applicant.

8. I have heard respective counsel and perused the material on record.

9. From perusal of the order passed by this Court it is clear that only the order passed in Criminal Revision No. 83 of 2020 and the order passed by the Sub Divisional Magistrate under Section 145 Cr.P.C. has been stayed by this Court. The Court had not issued any further mandamus or direction as to the parties to maintain status-quo as to the possession over the property in dispute.

10. Moreover, the title dispute or the title relating to the possession cannot be gone into in contempt proceedings under Section 12 of the Contempt of Courts Act. Recently the Apex Court in **Dr. U.N. Bora, Ex. Chief Executive Officer and others Vs. Assam Roller Flour Mills Association and another 2022 (1) SCC 101** has held as under:-

"8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the "wilful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible,

the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings."

11. This Court finds that no roving and fishing enquiry can be done by the contempt Court while exercising jurisdiction under Section 12 of Contempt of Courts Act, 1971.

12. As the matter is still pending before this Court and both the parties are litigating and there is no order as to the possession over the property in dispute and only proceedings under Section 145 Cr.P.C. has been stayed by this Court, no case for contempt is made out.

13. Contempt application is misconceived and dismissed, accordingly.

Order Date :- 17.10.2023

Shekhar