IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No. M-10693 of 2011
Date of Decision: 12.08.2015

Neha Chaudhary

...Petitioner(s)

Versus

State of Haryana & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. R.S. Mamli, Advocate
for the petitioner(s).

Mr. Kapil Aggarwal, Addl.A.G., Haryana.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kumar, Advocate
for respondent no.3.

Mr. Surya Kant Gautam, Advocate
for respondent no.4.
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HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the order dated 10.11.2010 (Annexure P2), whereby on an application moved by respondent no.4 namely Madan Mohan Hudia, the Sub Divisional Magistrate, Panipat has ordered eviction of the petitioner namely Neha Chaudhary from house No.57-A, Hari

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Bagh, Bhatia Colony, Panipat in her possession. The aforesaid order dated 10.11.2010 reads as under:-

> "*After perusing of the complaint and hearing of the complainant I reached on the conclusion that Sh. Madan Mohan Huria had given the house of Smt. Neha Chaudhary for three months in good faith. After three months instead of vacation of the house Smt. Neha Chaudhary filed a suit regarding stay in the Hon'ble Court of A.D.J. Kumud Gugnani, Panipat. Due to dismissal of her case, she filed an appeal in the Hon'ble Court of Smt. Sarita Gupta, Hon'ble A.D.J. dismissed the appeal of Smt. Neha Chaudhary on dated 11.10.2010. Therefore, as per the above mentioned Smt. Neha Chaudhary is living in the house of Sh. Madan Mohan Huria illegally.*
>
> *Therefore, keeping in view the above noted circumstances directions are issued to Incharge, Police Station, Model Town, Panipat if there is no stay order then the house of the complainant be vacated from Smt. Neha Chaudhary as per rules.*
>
> *Sd/-*
> *S.D.M.*
> *Panipat."*

Further challenge has been laid to an *inter se* communication dated 18.01.2011 (Annexure P1), whereby the Sub Divisional Magistrate, Panipat, respondent no.3, has written to Deputy Commissioner, Panipat to appoint some Duty Magistrate for vacation of the house from the petitioner.

Mr. R.S. Mamli, learned counsel for the petitioner contends that the petitioner is not a trespasser and is a licensee, for

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which respondent no.4 had filed a suit for possession dated 17.3.2011 titled as *Madan Mohan Huria v. Neha Chaudhary and another*, as the licence of the petitioner was terminated. The said suit was decreed vide judgment and decree dated 3.11.2014 passed by Civil Judge (S.D), Panipat, against which, the petitioner preferred an appeal before the first Appellate Court, which was dismissed vide judgment dated 19.3.2015. Challenging the aforesaid judgment dated 19.3.2015 passed by lower Appellate Court, the petitioner has preferred a regular second appeal i.e. RSA No.2930 of 2015, which is stated to have been pending before this Court for 1.9.2015.

It is argued that the orders dated 10.11.2010 (Annexure P2) and 18.01.2011 (Annexure P1) passed by Sub Divisional Magistrate, Panipat i.e. respondent no.3, are not only illegal and without jurisdiction, rather the same have caused irreparable injury to the petitioner and thus, the same cannot sustain to the scrutiny of law, particularly when the parties are agitating under the Civil Law, including the said Regular Second Appeal pending before this Court, which is fixed for 1.9.2015.

Mr. Sumeet Mahajan, learned senior counsel appearing for respondent no.3 has argued that the Civil Court has already decreed the suit for possession titled as *Madan Mohan Huria v. Neha Chaudhary and another* dated 17.3.2011, filed by respondent no.4, on termination of licence and even appeal against the said judgment and decree, has also been dismissed by learned lower

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Appellate Court vide judgment dated 19.3.2015 and therefore, the petitioner has no *locus standi* to claim possession, particularly when there is no stay in the regular second appeal pending before this Court. Thus, the present petition under Section 482 CrPC for quashing of orders dated 10.11.2010 and 18.1.2011 is not maintainable. The petitioner has got a specific remedy to file revision petition, as provided under Section 397 CrPC, against the order passed under Section 145 CrPC.

Short affidavit of respondent no.3 i.e. Sub Divisional Magistrate, Panipat has also been filed, stating therein that the petitioner is continuing with the possession, it cannot be said that she has been evicted from the demised premises on 13.2.2011 in compliance of the order passed by Sub Divisional Magistrate, Panipat. He further submitted that no negatives of the photographs have been supplied by the petitioner and therefore, the authenticity of the photographs could not be cross-checked.

Mr. Suryakant Gautam, learned counsel appearing on behalf of respondent no.4, while adopting the arguments raised by Mr. Sumeet Mahajan, Senior Advocate, contends that considering the fact that once the suit for possession by way of mandatory injunction filed by respondent no.4 has been decreed in his favour, the petitioner is in unauthorised possession of the demised premises. He further submits that even appeal against the aforesaid judgment and decree dated 3.11.2014 passed in civil suit has been

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dismissed by learned first Appellate Court vide judgment dated 19.3.2015 and the plea of the petitioner that Regular Second Appeal is pending before this Court, is of no help to him, particularly when neither any stay has been granted nor even any notice of motion has been issued therein. Therefore, the petitioner cannot derive any benefit of the fact of regular second appeal pending against the aforesaid judgments dated 3.11.2014 and 19.3.2015 before this Court.

I have heard learned counsel for the parties.

The plea of respondent no.3 regarding maintainability of the present petition deserves to be considered in the light of specific provision of Section 397 CrPC, wherein, against the order passed by an executing Magistrate, the remedy of revision is available to the petitioner. Section 397(1) CrPC reads as under:-

> ***397. Calling for records to exercise powers of revision.—***
>
> *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the*

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record.

Explanation.—*All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.*

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Having considered the fact that the orders dated 10.11.2010 and 18.1.2011 passed by Sub Divisional Magistrate, are in their official capacity and the petitioner has got specific remedy against the same under the Code of Criminal Procedure, mere plea of the petitioner that since the aforesaid orders are illegal and without jurisdiction, this Court has the jurisdiction to entertain the present petition under Section 482 CrPC, is misconceived, especially when there is specific provision under the law to challenge the said orders. The revisionary Court is also competent to look into the illegality in orders passed by inferior Court including the Court of Executive Magistrate. Moreover, the suit for possession by way of mandatory injunction filed by respondent no.4 was not only decreed by the Civil

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Court vide judgment and decree dated 3.11.2014, ordering eviction of the petitioner from the premises, even the appeal filed by the petitioner against the aforesaid judgment of eviction has also been dismissed by learned lower Appellate Court vide judgment dated 19.3.2015. The contention raised on behalf of the petitioner that RSA No.2930 of 2015 against the aforesaid judgments dated 3.11.2014 and 19.3.2015 is pending before this Court and is fixed for 1.9.2015, is also of no help to him when there is no stay in the appeal. There is a specific provision in Code of Criminal Procedure, whereby the impugned orders under Section 145 CrPC can be challenged, but the petitioner has not availed the aforesaid remedy.

Further, the plea raised on behalf of the petitioner that the orders under challenge are illegal and without jurisdiction can also be subject matter of scrutiny before the revisionery Court.

Therefore, the present petition filed under Section 482 CrPC is liable to be dismissed on the point of maintainability itself.

This Court cannot ignore the fact that the proceedings under Section 145 CrPC are summary in nature and the petitioner under the garb of aforesaid proceedings has clearly deprived the respondent no.4 from his legitimate right of use of his property. The petitioner was merely a licensee and not only the Civil Court vide judgment and decree dated 3.11.2014 has ordered the eviction of the petitioner from the premises in question, even the appeal against the said judgment and decree of Civil Court has been dismissed by the

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lower Appellate Court vide judgment dated 19.3.2015. Thus, the petitioner has succeeded in depriving the respondent no.4 from his legitimate right of use of his property under the garb of proceedings under Section 145 CrPC. Therefore, the petitioner has no claim even on equity as well.

Accordingly, the present petition is dismissed.

However, it is made clear that the observations made here-in-above shall not be construed as any expression on the merits of the regular second appeal i.e. RSA No.2930 of 2015 filed by the petitioner, which is pending before this Court.

August 12, 2015 **(*HARI PAL VERMA*)**
AK ***JUDGE***

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