

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-15245 of 2014
Date of Decision: February 09, 2015

Surjit Kaur

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikram Anand, Advocate
for the petitioner.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Ramesh Sharma and Mr.Malkeet Singh, Advocates
for respondent No.2.

None for proforma respondents No.3 and 4.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C.
for quashing of the judgment dated 15.01.2014 passed by learned
Addl. Sessions Judge, Kapurthala vide which the order dated
26.02.2013 passed by learned Sub Divisional Magistrate, Bhulath,
whereby request for initiating proceedings under Section 145 Cr.P.C.
was declined, has been set aside and all other subsequent
proceedings arising therefrom.

Notice of motion was issued in this case and learned State
counsel as well as learned counsel for contesting respondent No.2

appeared, filed reply and contested the petition. However, none appeared on behalf of proforma respondents No.3 and 4.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The brief facts of the case are that Calendera under Section 145 Cr.P.C. has been presented before learned SDM, Bhulath, on the basis of application filed by Jit Kaur. As per the application, Jit Kaur is daughter of late Bhag Singh. As per the Calendera, the share of Jit Kaur was got transferred by her brothers in the year 1982 in their own names. When objection was raised, they started giving her share in cash from the crop but now they refused and they have started cultivating the land of the share of Jit Kaur. Learned SDM, Bhulath after discussing these facts found that the civil suit is already pending before the civil Court and status quo order has already been granted by the civil Court. Hence, no need was felt to initiate proceedings under Section 145 Cr.P.C and same were dropped and application was declined. In the revision petition, learned Addl. Sessions Judge, Kapurthala, without discussing these facts that the proceedings are going on before the civil Court and the status quo order has been passed, set aside the order dated 26.02.2013 passed by learned SDM, Bhulath by stating that as per provisions of Section 145 Cr.P.C., it is mandatory for a Magistrate to receive all such evidence as may be produced by the parties.

From the record, I find that firstly it is clear that Jit Kaur, who filed the application is alleging that the sale deeds executed in

the year 1982 by her brothers are void. This fact regarding title is to be decided by the civil Court. Moreover, from the Calendera itself, it is clear that the brothers of Jit Kaur and their legal heirs are in possession of the suit land. She has stated that earlier they were giving her share from the crops and now they have refused. Therefore, it shows that the petitioner is cultivating the land since long but simply giving crop share to Jit Kaur as per her version. The matter regarding title and possession is pending before the civil Court and civil Court has already passed the order of status quo. Therefore, the proceedings under section 145 Cr.P.C. cannot be proceeded with when the civil Court is seized of the matter and injunction has been granted.

Learned counsel for the petitioner cited judgment passed by this Court in ***Karam Singh vs. Sub Divisional Magistrate, Zira, 2001(2) RCR (Criminal) 617***, in which it is held that when dispute is there over possession of land between co-sharers and civil Court is already seized of the dispute between the parties regarding the possession etc. and the order of the status quo has already been passed, the proceedings under Sections 145 and 146 Cr.P.C. are quashed.

Learned counsel for the petitioner further cited judgment passed by this Court in ***Hartej Singh vs. Amarjit Singh, 1998(2) RCR (Criminal) 755***, wherein it is held that when Civil Court has already ordered the status quo, the proceedings under Section 145 Cr.P.C. are parallel in nature and not competent. Learned counsel for

the petitioner also cited judgment passed by the Hon'ble Supreme Court in ***Ram Sumer Puri Mahant vs. State of U.P. and others, 1985(1) RCR (Criminal) 278***, in which it is held that criminal proceedings under Section 145 Cr.P.C. cannot be started while civil suit is pending.

Learned counsel for the petitioner also placed reliance on judgment passed by the Hon'ble Supreme Court in ***Amresh Tiwari vs. Lalta Prasad Dubey and another, 2000(2) RCR (Criminal) 614***, wherein it is held that in cases where civil suit is for possession or for declaration of title in respect of same property and where reliefs regarding protection of the property concerned can be applied for and granted by civil Court that proceeding under Section 145 Cr.P.C. should not be allowed to continue.

I have gone through all the above-cited judgments and the same fully apply to the facts of the present case. In view of the law laid down by the Hon'ble Supreme Court, proceedings under Section 145 Cr.P.C. cannot be proceeded with.

On the other hand, learned counsel for respondent No.2 cited judgment passed by the Hon'ble Supreme Court in ***Prakash Chand Sachdeva vs. State and another, 1994(3) RCR (Criminal) 217***, in which it held that when ownership is not disputed and there is no partition, one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law and where the dispute is not on the right to possession but on the question of possession, the Magistrate is empowered to take cognizance under Section 145

Cr.P.C. I have gone through the above-cited judgment and same having distinguished facts will not apply in the present case. There is dispute between the parties regarding right to possession as Jit Kaur is saying that sale deeds are not valid and her brothers have refused to give her share in the crop.

On the same point, learned counsel for respondent No.2 cited judgments passed by this Court in ***Ram Avtar and another vs. State of Haryana and others, 2013(3) RCR (Criminal) 323, Bawa Singh and others vs. State of Punjab and others, 2012(3) RCR (Criminal) 348, Karnail Singh vs. The Sub Divisional Magistrate and others, 1990(1) RCR 233***, judgments passed by the Hon'ble Allahabad High Court in ***Harpal vs. State of U.P. and others, 1995 All. LJ 840*** and ***Abdul Gafoor and others vs. State of U.P. and others, 1992(1) CCR 373***. I have gone through all the above-cited judgments and the same will not apply in the present case in view of the law laid down by the Hon'ble Supreme Court as cited by learned counsel for the petitioner.

Learned counsel for respondent No.2 also cited judgment passed by the Hon'ble Supreme Court in ***Dharampal vs. Ramshri, 1993(1) RCR (Criminal) 696***, wherein it is held that the second revision by the same party is not permissible as per Section 397(3) Cr.P.C. I have also gone through the above-cited judgment and the same will not apply in the present case. When learned Addl. Sessions Judge, Kapurthala without discussing the law on the point that when the civil proceedings are pending before the civil Court and injunction

order has been granted, had allowed the revision, then the order passed by learned Addl. Sessions Judge is illegal and not as per law and amounts to miscarriage of justice. It is settled law that High Court has wide powers and can quash any order or proceeding for securing ends of justice and to avoid miscarriage of justice. Though, ordinarily proceedings under Section 482 Cr.P.C. are not maintainable which are filed in the guise of second revision but at the same time, the High Court's powers under Section 482 Cr.P.C. are unlimited to secure the ends of justice and to prevent miscarriage of justice

In view of the above discussion, I find the judgment passed by learned Addl. Sessions Judge, Kapurthala is illegal and not as per law.

Therefore, finding merit in the present petition, the same is allowed. The impugned judgment dated 15.01.2014 passed by learned Addl. Sessions Judge, Kapurthala and all other subsequent proceedings arising therefrom are hereby quashed.

February 09, 2015
Vgulati

(INDERJIT SINGH)
JUDGE