IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 207

Criminal Miscellaneous No.M-35320 of 2014 (O & M)
Date of Decision: *July 15, 2015*

Ramesh

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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

. . .

PRESENT: - Mr. Sanjay Vashisth, Advocate, for the petitioner.

Mr. D.R. Singla, Deputy Advocate General, Haryana, for respondent Nos.1, 2 and 4.

Mr. Akshay Bhan, Senior Advocate, with Mr. Harpreet S. Sandhu, Advocate, for respondent No.3.

. . .

Jaspal Singh, J

1. This is a petition under Section 482 Cr.P.C. preferred by Ramesh seeking quashing/ setting-aside of Kalandra dated October 22, 2013 (Annexure P-9), preliminary order dated November 20, 2013 (Annexure P-10) issued under Section 145 Cr.P.C. and consequent undated order, Annexure P-14 passed by District Revenue Officer –cum-

AVIN KUMAR
2015.07.20 10:20
I attest to the accuracy and
authenticity of this document
High Court of Punjab & Haryana at
Chandigarh

Executive Magistrate, Narnaul, vide which proceedings under Section 145 Cr.P.C. were ordered to continue.

2. The facts giving rise to instant petition are that Kalandra under Section 154 Cr.P.C. was presented by SHO, Police Station, City, Narnaul, on October 22, 2013 with a request that proceedings under Section 145 Cr.P.C. be initiated and the matter be disposed of after calling/ recording evidence of parties since multiple complaints were being lodged by Ramesh son of Munshi Ram, on one hand and Ashwani son of Surya Narayan, on the other hand. Subsequent thereto, City Magistrate, Narnaul, while acting on the Kalandra, passed preliminary order on November 22, 2013 (Annexure P-10) which reads as under:-

> "In the court of Sh. Pratap Singh (HCS) City Magistrate, Narnaul
>
> Party 1
> 1. Ramesh s/o Munshiram caste Saini r/o Mohalla Dayalnagar, Narnaul.
>
> Party 2
> 2. Ashwani s/o Suryanarayan caste Brahmin r/o Mohalla Kayastwara, Narnaul.
>
> Case under Section 145 Cr.P.C.
>
> Preliminary Order:
>
> It appears to me on the ground duly recorded that a dispute likely to induce a breach of peace existed between the aforesaid parties concerning land khewat no.7411 khatoni no.1049 khasra no.4045, 4058, 4060 to 4063 total Area 10 Bigha 10 Biswa and Khewat No.743 Khatauni No.1051 khasra no.4035 to 4038, 4049, 4051 to 4055, 4057, 4059 total area 15 Bisha 17 Biswa situated in the Revenue Estate, Narnaul Tehsil Narnaul P.S. Narnaul, District Mahendergarh.
>
> I, therefore, require the parties above named to attend this court in person or by the pleader on 28.11.2013 at 10.00 AM and put the written statement of their respective claims affidavits and other documents upon which they rely as to the fact of actual possession of the aforesaid land.
>
> Copies of above orders be served upon the parties.
>
> A copy of this order be also affixed at the conspicuous place or near the disputed land.

AVIN KUMAR
2015.07.20 10:20
I attest to the accuracy and
authenticity of this document
High Court of Punjab & Haryana at
Chandigarh

Given under my hand and seal of this court on 20.11.2013.

Sd/-
Executive Magistrate (CTM)
Narnaul 20.11.13”

3. Thereafter, Ramesh, first party in Kalandra, moved an application (Annexure P-11) before the District Magistrate, Narnaul for revocation of preliminary order passed by the City Magistrate, and for dropping the proceedings, especially on the ground that Ashwani, second party, has no right and interest in the property as he has claimed himself to be owner on the basis of an alleged agreement of sale executed by Vijay Kumar Goswami and his mother Savitri, that too only in respect of a plot measuring 700 square yards. Further that, proceedings under Section 145 Cr.P.C. have been initiated not only in respect of plot measuring 700 square yards but also in respect of whole area measuring 15 bigha 17 biswas abutting Narnaul – Behror road, which is owned and possessed by first party. But, that application was also declined vide order, Annexure P-14 and hearing was deferred till July 18, 2014 for submission of claims. Then, Ramesh son of Munshi Ram preferred a revision petition against order dated July 14, 2014 passed by Executive Magistrate, Narnaul, vide which application moved by him for dropping proceedings under Section 145 Cr.P.C. was dismissed, but that appeal was also dismissed vide order dated September 9, 2014 by Additional Sessions Judge, Narnaul, upholding order dated July 14, 2014 passed by the Executive Magistrate, which necessitated filing of instant petition.

AVIN KUMAR
2015.07.20 10:20
I attest to the accuracy and
authenticity of this document
High Court of Punjab & Haryana at
Chandigarh

4. This Court has heard learned counsel for parties at length and minutely gone through various documents available on file.

5. It is an undisputed fact that Civil Suit No.117 dated March 30, 2013/ September 27, 2013 was filed by Parbhati and others against Vijay Kumar and others claiming themselves alongwith proforma respondents to be owners in possession of agriculture land measuring 15 bigha 17 biswas situated at Narnaul, description of which, finds mention in Para No.2(a) of the petition. In the said suit, parties were directed to maintain status-quo till further orders, vide order dated September 19, 2013 (Annexure P-3). Here, it would also be pertinent to mention that property measuring 15 bigha 17 biswas was purchased by plaintiffs or their ancestors from uncle of Vijay Kumar Goswami, defendant No.1 in civil suit, with specific khasra numbers. Since the civil court is already seized of the matter, said suit would be decided by it by taking into consideration evidence brought on record by parties as well as keeping in view legal proposition of law. Apart from it, a criminal litigation also ensued between parties as a result of which, FIR No.539 dated October 20, 2013 (Annexure P-4) under Sections 148, 149, 323, 506, 452, 435, 427 IPC was registered against 14 persons including petitioner. Regarding same incident, another FIR No.541 dated October 21, 2013 (Annexure P-5) under Sections 148, 149, 323, 325, 452, 506 IPC was registered against 9 persons. Besides aforesaid criminal litigation, proceedings under Section 107/151 Cr.P.C. were also initiated against

AVIN KUMAR
2015.07.20 10:20
I attest to the accuracy and
authenticity of this document
High Court of Punjab & Haryana at
Chandigarh

plaintiffs as is evident from kalandra dated October 22, 2013 (Annexure P-6).

6. As far as initiation of proceedings under Section 145 Cr.P.C. is concerned, Ashwani, second party, is playing main role and he appears to have been projected by Vijay Kumar Goswami and his mother Savitri who have allegedly entered into an agreement of sale dated January 23, 2013 with him in respect of land measuring 700 square yards.

7. Undisputably, Vijay Kumar and his mother Savitri have been arrayed as defendant Nos.1 & 2 respectively in the civil suit. Till date, sale deed has not been executed by aforesaid Vijay Kumar and Savitri in favour of Ashwani. It is a settled proposition of law that an agreement of sale does not confer any title. Thus, Ashwani has got no right, title or interest in the property regarding which proceedings under Section 145 Cr.P.C. have been initiated and kalandra has been presented by SHO, Police Station, City, Narnaul. Another aspect of the case is that dispute, if any, has been raised by Ashwani in respect of plot measuring 700 square yards only, whereas proceedings under Section 145 Cr.P.C. have been initiated in respect of total land measuring 15 bigha 17 biswas which is not permissible under law.

8. Ashwani has nothing to do with property in dispute. Though he is claiming himself to be owner of a plot measuring 700 square yards yet he has no document of title. As such, he has got no

AVIN KUMAR
2015.07.20 10:20
I attest to the accuracy and
authenticity of this document
High Court of Punjab & Haryana at
Chandigarh

locus-standi to initiate proceedings under Section 145 Cr.P.C. Similarly, it is also well settled that when Civil Court is already seized of the matter with regard to possession of property in question, proceedings under Section 145 Cr.P.C. are not legally maintainable. Thus, considering the case from any of the angles, neither presentation of kalandra (Annexure P-9) is permissible nor orders passed subsequent thereto are legally sustainable in the eyes of law.

9. Accordingly, petition is allowed. Kalandra dated October 22, 2013 (Annexure P-9), preliminary order dated November 20, 2013 (Annexure P-10) issued under Section 145 Cr.P.C. as well as subsequent orders and proceedings carried out are quashed.

(Jaspal Singh)
Judge

July 15, 2015
avin

AVIN KUMAR
2015.07.20 10:20
I attest to the accuracy and
authenticity of this document
High Court of Punjab & Haryana at
Chandigarh