

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRR-1177-2015 (O&M)
Date of decision : 06.07.2015**

Pawan Kumar

..... Petitioner

Versus

Sanjay Kumar and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the 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. Jaswant Jain, Advocate for petitioner.
Mr. Anurag Jain, Advocate for respondent No.1.

DARSHAN SINGH, J.

The present revision petition has been preferred against the judgment dated 09.02.2015, passed by learned Additional Sessions Judge, Hisar, whereby the order dated 22.04.2014 passed by the learned Sub Divisional Magistrate, Hisar under Section 145 of the Code of Criminal Procedure, 1973 (here-in-after called the Cr.P.C.) has been set aside and the matter has been remanded back to the Sub Divisional Magistrate, Hisar with a direction to pass afresh order determining the possession of the parties as on 08.11.2012 or before two months therefrom. He has also been directed to consider the question regarding maintainability of the

proceedings under Section 145 Cr.P.C. in the wake of pendency of the civil suit between the parties.

2. Petitioner Pawan Kumar moved an application to the Incharge Police Post City, Hisar on 07.11.2012 pleading himself to be the owner in possession of a service station and a showroom at Tayal Garden, Barwala Road, Hisar near Bishnoi Hospital, Hisar. He is carrying the business therein in the name of Haryana Service Station. Respondent Sanjay Kumar, who is his son, was given the ground floor of the building as a licensee in which he was carrying on the business of vehicles in the name of Bimla Automobiles. On 14.4.2011, the showroom was got vacated from Sanjay Kumar. However, he came along with 4-5 bad elements with 2/3 scooters etc. with intent to forcibly take the possession and started quarreling and threatening the petitioner. The Incharge of the Police Post, acting on the application of the petitioner, went to the spot and fearing apprehension of breach of peace, got recorded the Daily Diary Report No.12 dated 07.11.2012 and filed the complaint/Calendra under Section 145/146 Cr.P.C. in the Court of the Sub Divisional Magistrate, Hisar.

3. After perusing the report and statements, the learned Magistrate vide order dated 09.11.2012 appointed the Tehsildar as a receiver under Section 146 Cr.P.C. to take the possession of the Haryana Service Station and showroom constructed thereon. In compliance of the said order, the Tehsildar acting as a receiver took the possession thereof on 16.11.2012.

4. Respondent filed an application for removal of the receiver. The said application for removal of the receiver as well as dropping the proceedings was dismissed vide order dated 29.01.2013.

5. Thereafter the evidence of the parties was recorded.

6. On appreciating the evidence and contentions raised by learned counsel for the parties, the learned Magistrate ordered the dropping of the proceedings under Section 145/146 Cr.P.C. The Tehsildar Hisar (receiver) was directed to immediately hand over the possession of the Haryana Service Station and showroom constructed thereon to petitioner Pawan Kumar. Respondent No.1 was directed to take back whatever articles were lying in the disputed property, after opening the locks and video recording of the articles lying therein.

7. Aggrieved with the aforesaid order, respondent No.1 preferred the revision under Section 397 Cr.P.C. before the Court of Sessions. The learned Additional Sessions Judge set aside the order dated 22.04.2014 and directed the learned Magistrate to pass the order afresh and to determine the possession of the parties as on 08.11.2012 or before two months therefrom. He has also been directed to consider the question regarding maintainability of the proceedings under Section 145 Cr.P.C. in the wake of pendency of the civil suit between the parties.

8. Learned counsel for the petitioner contended that the revisional order passed by the learned Additional Sessions Judge, Hisar is illegal. The findings have already been given by the learned Magistrate with respect to the possession. He contended that the learned Magistrate

has categorically mentioned in the order dated 22.04.2014 that the revenue record shows that the petitioner to be owner of the disputed property and from the police report it is clear that respondent No.1 wants to take the possession of the disputed property by use of force. In the year 2011, he has even transferred his business to another property at Sirsa Road. Thus, he contended that as per the findings of the learned Magistrate, respondent No.1 had already shifted his business in the year 2011 from this property to some other property situated at Sirsa Road and he wants to forcibly take the possession of the disputed property, which shows that the learned Magistrate has given a clear finding that the petitioner was in possession of the disputed property. So, there is no infirmity in the impugned order passed by the learned Magistrate as the findings on the question of possession have been clearly returned by the learned Magistrate.

9. He further contended that the proceedings under Section 145/146 Cr.P.C. are squarely maintainable. Mere pendency of the litigation in the Civil Court is no ground to drop the proceedings. He contended that no interim injunction has been issued in favour of respondent No.1 by the Civil Court. So, there is no legal bar to initiate and entertain the proceedings under Section 145 Cr.P.C. To support his contentions, he relied upon cases **Mohinder Singh Vs. Shri Dilbagh Rai 1976 PLR 803, Parkash Chand Sachdeva Vs. State and another 1994(3) RCR (Criminal) 217 and Santokh Singh Vs. State of Punjab and another 2010(2) RCR (Criminal) 257.**

10. On the other hand Mr. Anurag Jain, Advocate, learned counsel for the petitioner contended that respondent No.1 has already filed suit with respect to this very property. The Civil Court is seized of the matter and will determine the question of possession. So, the present proceedings could not have been initiated. To support his contentions, he relied upon cases **Ashok Kumar Vs. State of Uttarakhand and others 2013(1) RCR (Criminal) 961**, **Jhummal alias Devandas Vs. State of Madhya Pradesh and others 1989(1) Recent Criminal Reports 428**, **Ranbir Singh Vs. Dalbir Singh 2002(2) RCR (Criminal) 275**, **Siri Ram Vs. Lal Chand 1997(3) RCR (Criminal) 651** and **R.C. Patuck Vs. Fatima A. Kindasa 1997(3) Recent Criminal Reports 195**.

11. He further contended that the Magistrate in the proceedings under Section 145 Cr.P.C. is not competent to give any finding qua title or right to possess. He can only determine the question of possession on the date of filing the petition and two months before. He contended that in the order dated 22.04.2014, learned Magistrate has not given any finding about the possession over the disputed property on the relevant dates. So, there is no infirmity in the revisional order passed by learned Additional Sessions Judge.

12. I have duly considered the aforesaid contentions.

13. The learned Additional Sessions Judge has set aside the order dated 22.04.2014 passed by the learned Magistrate and has remanded the case with a direction to the learned Magistrate to pass the order afresh and to determine the possession of the parties on 08.11.2012

or before two months therefrom. The learned Magistrate was also directed to consider the question regarding maintainability of the proceedings in view of the **Ashok Kumar's** case (supra) and **R.C. Patuck's** case (supra).

14. As far as the question regarding maintainability of the proceedings is concerned, the learned Magistrate irrespective of the observations in the impugned order will arrive at his independent conclusion taking into consideration the merits of the case and the legal position. Nothing more is required to be observed by this Court on this aspect in the present petition.

15. Sections 145 Sub Section 4 Cr.P.C. reads as under : -

145. Procedure where dispute concerning land or water is likely to cause breach of peace

(1) XX XX XX

(2) XX XX XX

(3) XX XX XX

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he

may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)

(5) XX XX XX

(6) XX XX XX

(7) XX XX XX

(8) XX XX XX

(9) XX XX XX

(10) XX XX XX

16. As per the aforesaid provision, the Magistrate has to decide about the question with respect to the physical possession or the parties over the disputed property without reference to the merits or the claim of any of the party to a right to possess the subject of dispute. So, the question of title is not to determine by the Magistrate in the proceedings under Section 145 Cr.P.C. He has only to declare the possession of a person over the disputed property on the date of preliminary order or to ascertain the wrongful dispossession within two months next before the date when he received the report of the police officer or information.

17. The Hon'ble Apex Court in case **Ranbir Singh Vs. Dalbir Singh** (supra) has laid down as under : -

“The Court, while dealing with a proceeding under Section 145 Cr.P.C., is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to the date; the Court is not required to decide either title to the property or right of possession of the same.”

18. Thus, the scope of inquiry under Section 145 Cr.P.C. is with respect to the actual possession without reference to the merits or claim of any party to a right to possession the subject in dispute.

19. Now we have to see as to whether the learned Magistrate has given any finding in the order dated 22.04.2014 with respect to the actual physical possession over the property in dispute on the date of the order passed by him under Section 145 (1) or the wrongful dispossession within two months before the date on which the report of the police was received by him.

20. I do not find any substance in the plea raised by learned counsel for the petitioner that these findings have been given by the Magistrate in the order dated 22.04.2014. The findings recorded by the learned Magistrate reads as under:-

“I have heard counsel for both the parties and perused the entire file. Both the parties are disputing in respect of family property. As per the revenue record available on the file, first party is the owner of the disputed property and from the report forwarded by the police department, it is clear that the second party wants to take possession of the disputed property by use of force. In the year 2011 he even transferred his business from this property to Sirsa Road. The second party has failed to produce any order passed in his favour by any competent court. Thus, keeping into consideration all the facts, I order for dropping the proceedings under Section 145/146 Cr.P.C., which were set in motion vide order dated 9.11.2012. Tehsildar Hisar (Receiver) is directed to immediately hand over the possession of Haryana Service Station and showroom constructed thereon, Tayal Garden, Barwala Road near Bishnoi

Hospital, Hisar to the first party i.e. Pawan Kumar and give notice to the second party to take back whatever articles are lying in the disputed property. Both the parties be informed and the time be fixed. At the fixed time after opening the locks video recording be done of the articles lying. In case the second party – Sanjay Kumar fails to take his articles from the disputed property, then the said articles be handed over to Pawan Kumar – first party by Tehsildar Hisar. He would prepare a list of the articles and hand over the possession of the same to SHO Police Station City Hisar and a report be sent to this Court. Video recording be also done in this regard. A true attested copy of this order is being forwarded to the Tehsildar Hisar (Receiver) with a direction to submit compliance report and the proceedings under taken, to this Court forthwith.”

21. It is apparent from the afore-mentioned order passed by the learned Magistrate that he has not given any findings as to which of the party was in physical possession of the disputed property on the date of passing the order under Section 145 (1) Cr.P.C. or within two months next before the date when he received the report of the police. He has simply referred the revenue record with respect to the ownership of the petitioner and the police report wherein it has been mentioned that respondent No.1 wanted to take the possession of the disputed property by use of force. It is not mentioned on what evidence/material the said police report is based. Consequently, I do not find any legal infirmity in the impugned order passed by the learned Additional Sessions Judge directing the learned Magistrate to pass the order afresh.

22. Thus, no interference is warranted by this Court.

Resutantly, the present revision petition is without any merits and the same is hereby dismissed.

06.07.2015

sunil yadav

(DARSHAN SINGH)
JUDGE