

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

CRM-M-1513 of 2013

Date of Decision: February 29, 2016

Mahant Chamkaur Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Harjot Singh Bedi, Advocate
for the petitioner.

Mr. Gurveer Singh Sidhu, AAG, Punjab.

FATEH DEEP SINGH, J.

In this petition under Section 482 Cr.P.C. a prayer has been made by the petitioner-Mahant Chamkaur Singh who claiming to be the President/Manager of Educational and Charitable Trust, Patiala (for short, 'the trust') has sought relief for quashing of Kalandra under Section 145 Cr.P.C. dated 30.07.2012 (Annexure P/1) in the light of the fact that the civil litigation in respect of rights, management and control of the same very property is pending.

Heard, learned counsel for the parties. A short treatise that emerges from the arguments of the parties as well as records are that an Educational and Charitable Trust by the name of Bhai Ram Sewa Panthi Educational and Charitable Trust, Patiala runs a school under the name and style of Bhai Ram Kishan Gurmat Public Senior Secondary School, village Chaura, Patiala. The petitioner claims that he has been duly appointed as President-cum-Manager of this Trust and the school vests in the Trust who are its rightful owner. It is the contention of the petitioner that earlier respondent No.4-Sunder

Singh happened to be the Chairman of this Trust, who on account of his own misconduct was so removed and subsequently FIR No.79 dated 10.5.2012 under Sections 307,452,392,427,295-A,323,506,148,149 IPC was also registered against him. The stand of the respondents in unison was of total denial, wherein it was submitted in the reply that the Trust has a chequered history as its previous head Pritam Singh was murdered in the year 2004, thereafter, in the congregation of the Mahants respondent No.4-Sunder Singh, who was then a minor below 18 years of age was appointed as head of the Trust in which the petitioner was appointed as his guardian but on account of dubious act of the petitioner he too was removed as guardian of respondent No.4 on 25.10.2007 contending that efforts of the petitioner to grab this property led to the initiation of the proceedings under Section 145 Cr.P.C. on 30.7.2012 and to subvert the same subsequently on 5.1.2013 after more than five months a civil suit was filed by the petitioner and which stood dismissed on 10.7.2013 in default.

Appreciating the contentions of the two sides the arguments that have sought to be put forth is as to the very maintainability of the present petition. The question whether proceedings Annexure P/1 could not be initiated and that too over an educational trust needs to be considered and answered. Learned counsel for the petitioner could not satisfy this Court as to the existence of Civil Court proceedings as on the date when the proceedings under Section 145 Cr.P.C. are initiated i.e. on 30.7.2012 and it is subsequent thereto the civil suit was filed on 05.1.2013 and which suit for declaration admittedly stood dismissed in default on 10.7.2013. There is no tangible evidence before this Court led by the petitioner to depict continuation of this suit as on date and, therefore, the position of law that was enunciated in the case of **Amresh Tiwari vs. Lalta Parsad**

Dubey and another 2000(2) RCR Criminal 614 whereby, it was very well laid down position of law as enunciated even by the Hon'ble Apex Court that it is only in the case where the civil suit for possession or for declaration of title in respect of same very property is pending and the stay is granted by the civil Court and in only that very situation proceedings under Section 145 Cr.P.C. should not be allowed to be continued. But here as is evident from the copy of the Civil Court orders dated 10.7.2013 Annexure P/4/6 shows that it is not a dispute over the possession of the property of the educational institution but is over the very factum of its management which the petitioner wants to lay hands on and which is refuted by respondent No.4. The trust has its own laws and bye-laws to govern its properties and to run the educational institution. It is not desirable in the larger public interest to put to hold the governance through proxy by initiation of such proceedings by the local Administrative Authorities of the district by resorting to passing of order by way of Annexure P/4 which certainly are highly uncalled for as it is a dispute regarding management and funds of the college. Therefore, moot point that comes forth is whether such a case is covered under the provisions of Section 145 Cr.P.C. or not. Since it is the case of the parties that there is a provision for appointing Chairman/President of the trust for the governance of the educational institution at Patiala and, thus, how the local administration has jumped into the fray and tried to sort out the issue on its own end rather than relegating the parties to either pursue relevant remedy before the Civil Court or to resort to its bye-laws as to the election of the Management Committee and as has been contended before this Court that there was an eventuality as to breach of peace which if it exists regarding such a property consisting of land or boundary thereof then appropriate recourse for the authorities is to take recourse to

proceedings under Section 107, 151 Cr.P.C. and it is only when it is essentially a dispute over property such a recourse under Section 145(1) Cr.P.C. is necessitated and subsequently leading to exercise of powers by virtue of sub-section 4 of Section 145 Cr.P.C. by the Magistrate who may consider the case of emergency in exercise of these powers.

Since in this case the school is being already run by the committee and, thus, there is no such need for exercise of emergent powers by the Magistrate and, thus, there is no need the learned Magistrate to have taken note of the running of the affairs of the duly constituted trust and constituents of the trust and it would be too preposterous for the learned Magistrate to have ordered any such steps which could have a bearing as to the respective rights to administer the Trust by the parties who are validly competent to constitute committee or to manage the affairs of the college. Thus, the school has to be run as per the scheme approved by the Educational Authorities of the State and whether there is duly and legally competent office bearers of this trust falls within the jurisdiction of the Civil Court or such Educational Authorities and not by criminal Court.

Thus, in the totality of what has been detailed and discussed above, to the mind of this Court, there is no such eventuality for the learned Magistrate to have initiated proceedings under Section 145 Cr.P.C. In the light of these discussions the instant petition is allowed to that limited extent, thereby, quashing the kalandra in question and all the proceedings emancipating therefrom.

(FATEH DEEP SINGH)
JUDGE

February 29, 2016
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