IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. M-27131 of 2010
DECIDED ON: February 04, 2016

Sukhchain Singh

.....Petitioner...

VERSUS

State of Punjab and another

....Respondents...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harbhajan Singh, Advocate for Mr. B.S. Sidhu, Advocate, for the petitioners.

Mr. J.S. Sekhon, AAG, Punjab.

Mr. DPS Randhawa, Advocate for respondent No.2.

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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?

JASPAL SINGH, J.

By virtue of this petition preferred under Section 482 of the Code of Criminal Procedure, Sukhchain Singh-petitioner has sought quashing of order dated 03.01.2008 (Annexure P-2) as well as order dated 06.08.2010 (Annexure P-3) passed by ld. Additional Sessions Judge, Muktsar whereby order passed by Sub Divisional Magistrate, Muktsar, has been upheld, vide which, while disposing of the complaint (calandra), it has been observed that party No.1 i.e. Amrinder Singh S/o Kuldip Singh R/o Kacha Thandewala Road, Muktsar, has been held to be in possession prior to the initiation of

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proceedings and directed the police to maintain peaceful possession at the spot under Section 145(1) Cr.P.C.

2. While challenging the impugned order, it has been urged by learned counsel for the petitioner that impugned orders passed by both the courts below are result of non-application of mind to the facts and circumstances of the case, which are otherwise against the documentary evidence available on file. Mis-appreciation of evidence available on file by Sub Divisional Magistrate as well as Additional Sessions Judge has resulted into miscarriage of justice. In fact, in the month of March 2007, Daljit Singh husband of Jawinder Kaur and one Vijay Kumar Madan started harassment to the petitioner on the account of possession of plot. Under compelling circumstances, the petitioner had to file a suit for permanent injunction in the Court at Additional Civil Judge, Muktsar on 22.03.2007 wherein the parties were directed to maintain status quo qua possession vide order dated 03.01.2008 but in order to frustrate the civil suit, respondent No.2 took the law into his hands and lodged a complaint with the police to initiate the proceedings under Section 145 Cr.P.C. The petitioner did not lead any evidence in the civil suit, which was ultimately dismissed under Order 17 Rule 3 of the Civil Procedure Code and the counter claim suit filed by the respondents therein was also dismissed as withdrawn. It has further been contended by the learned counsel for the petitioner that the impugned order (Annexure P-2) passed by ld. SDM is absolutely without jurisdiction as under the provisions of 145 (1) Cr.P.C. the

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Executive Magistrate has no jurisdiction to issue order for maintaining the possession of a particular party nor any such direction can be issued to the police to maintain the possession of the particular party. Moreover, ld. SDM did not collect any evidence that respondent No.2 was in possession of the plot two months prior to the preparation of calendra. Without collecting any evidence, it is absolutely wrong and illegal to observe that respondent No.2 was in possession over the plot in dispute two months prior to the presentation of calendra. Even otherwise, there is no evidence available on record that the petitioner forcibly trying to take possession of plot in dispute. So direction to the police to maintain the peaceful possession is unwarranted. Moreover, there is ample evidence adduced by the petitioner that he was in peaceful possession over the plot in dispute that too much prior to the initiation of proceedings under Section 145 (1) Cr.P.C. which have been ignored and disbelieved by ld. SDM while passing the impugned order. Even otherwise, it is well settled that during the pendency of civil suit, no proceedings under Section 145(1) Cr.P.C. should have been initiated by the police and no cognizance should have been taken by SDM in pursuance of the calendera presented by the police. Similarly, the ld. Additional Sessions Judge has also lost sight of the fact that there was no evidence adduced by either of the parties before passing of the impugned order by SDM. Though, it has been recorded in the impugned order that the parties adduced the evidence, which has been considered by the ld. Magistrate, while upholding the order

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passed by him. Thus, the impugned order passed by SDM as well as the order passed by ld. Additional Sessions Judge being against the evidence available on file as well as the legal proposition are not sustainable in the eyes of law and liable to be set aside by way of acceptance of instant petition.

3. On the other hand, learned counsel for respondent No.2 has supported the impugned orders passed by both the courts below. He has submitted that there is no infirmity, illegality in the impugned orders, which are otherwise absolutely inconsonance with the evidence available on file and legal proposition applicable to the facts and circumstances of the case in hand. He has further submitted that various contentions put forth by learned counsel for the petitioner are without any legal and factual substance. Thus, the impugned orders do not call for any interference by this Court and the instant petition being devoid of merit deserves to be dismissed.

4. After bestowing due consideration to the rival submissions made by learned counsel for the parties, appraisal of documents available on file as well as scrutinizing the impugned orders, this Court is of the considered view that various submissions made by learned counsel for the petitioner are without any legal and factual substance.

5. As far as contention of learned counsel for the petitioner that SDM did not afford an opportunity to adduce and conclude evidence in support of their respective claim, is concerned, the same is against factual position. After the presentation of calendra under

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Section 145 Cr.P.C., the notice was admittedly issued in pursuance of which Gurmit Singh Brar, Advocate appeared on behalf of second party i.e. Sukhchain Singh-petitioner on 01.10.2007 and on 06.12.2007, both the parties produced documents in support of their respective claims. Thereafter, the case was listed for 03.01.2008 for arguments. Thus, it cannot be said that no opportunity to lead evidence was afforded to the parties to the petition.

6. As regards, the another contention that the proceedings under Section 145 Cr.P.C. cannot be initiated or are not sustainable in view of the pendency of civil litigation, the same also carries no legal weight. No doubt, a civil suit for permanent injunction was instituted by the petitioner but since no evidence was led by the petitioner despite having afforded ample opportunity, it was dismissed while resorting to provision contained in Order 17 Rule 3 CPC. So, due to the mere pendency of civil suit, the proceedings initiated under section 145 Cr.P.C. cannot be termed to be unlawful. The. ld. SDM while passing the impugned order dated 03.01.2008 has rightly come to the conclusion that the first party i.e. respondent No.2 had taken the possession of 5 marla plot an on 10.07.1990 by raising the construction of the boundary wall of plot whereas, the calendra was presented on 11.07.2007 and further that respondent No.2/first party was in possession of the property in dispute two months prior to the initiation of proceedings. It was the petitioner, who has been trying to take forcible possession of the plot in question as his land adjoins it. Thus,

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ld. Magistrate has rightly held the possession of respondent No.2/first party, at the time of initiating proceedings under Section 145 Cr.P.C. and has maintained his possession. So, there is no infirmity or illegality in the impugned order dated 03.01.2008 passed by ld SDM, which has been subsequently upheld in revision by ld. Additional Sessions Judge, Sri Muktsar Sahib. Moreover, there is nothing on the record to prove that petitioner ever came in possession of the plot in question.

7. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed.

February 04, 2016 **(JASPAL SINGH)**
sonika **JUDGE**

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