

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

**CRM No.M-32060 of 2015 (O&M)
Date of Decision: December 18, 2017**

Dhoom Singh and another

...Petitioners

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.P.S.Sandhu, Advocate
for the petitioners.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr.R.K.Saini, Advocate
for respondent No.2.

Mr.Parvesh Mor, Advocate for
Mr.S.K.Verma, Advocate
for respondent No.3.

None for remaining respondents.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against State of Haryana and other respondents, for quashing of order dated 07.05.2015 passed by learned Addl. Sessions Judge, Ambala, in criminal revision No.84 dated 01.10.2014 as well as orders dated 16.09.2010 and 08.07.2014 passed by learned SDM, Naraingarh along with Calendra under Section 145 Cr.P.C. registered vide DDR No.20 dated 05.03.2010.

learned counsel for private respondents No.2 and 3 appeared and contested the petition.

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

From the record, I find that the petitioners, in the petition, mainly stated that they are suffering from the hands of respondents No.2 to 6, who are co-sharers along with them in agricultural land situated at Patreheri, Tehsil Naraingarh and the proceedings initiated under Sections 145 and 146 Cr.P.C. are sheer abuse of process of law being not maintainable because the civil litigation is already pending between the parties before Civil Court as well as Revenue Court relating to the land in question. Hence, the petitioners are left with no other option but to approach this Court by way of filing the present petition. It is further stated that respondents No.2 and 3 are real brothers and present petitioners are their nephews and all are residing at village Patrehari. The petitioners are co-owners of the land in question and are in possession of bigger share of total land which was not partitioned by metes and bounds. Earlier, a suit for declaration was filed by respondents No.1 and 2 against the petitioners in Civil Court in the year 1992-93 but the said suit was dismissed vide judgment and decree dated 30.11.2011 by learned Addl. Civil Judge (Sr.Divn.) Naraingarh and against the said judgment, an appeal was also filed by respondent No.3, which was also dismissed by learned Addl. District Judge, Ambala vide judgment and decree dated 15.12.2014. During the pendency of the aforesaid civil suit, a petition for partition was filed by the petitioners against other co-sharers in the Court of AC IInd Grade, Shahzadpur. Then, an application dated 02.03.2010 was filed by

respondent No.2 for initiation of proceedings under Section 145 Cr.P.C. qua the land in dispute before learned SDM, Naraingarh, to restrain the petitioners for causing any breach of peace. A report was called from Naib Tehsildar, Shahzadpur, in which he stated that no apprehension was shown relating to any breach of peace between the parties. It is also stated in the petition that in spite of aforesaid report, learned SDM, Naraingarh, acted in connivance with private respondents and appointed, Naib Tehsildar, Shahzadpur, as receiver and authorized him to attach the land by taking and keeping possession of the disputed land and hold the same under attachment vide impugned order dated 16.09.2010. A revision was filed by the petitioners and learned Addl. Sessions Judge, Ambala, dismissed the same vide judgment dated 05.09.2012. Again, an application dated 20.02.2014 was filed by the petitioners for setting aside the order dated 16.09.2010, which was dismissed by learned SDM, Naraingarh vide order dated 08.07.2014. A revision was filed, which was again dismissed by learned Addl. Sessions Judge, Ambala, vide order dated 07.05.2015.

The petitioners further stated that learned Addl. Sessions Judge has completely overlooked the fact that civil litigation is already pending between the parties relating to the land in question and there is not even a single case of any attempt from either side for breach of peace.

In reply, the State mainly stated that as regarding civil litigation, only private respondents can tell about this fact. However, the State stated that applications have been correctly dismissed and the proceedings have been correctly initiated etc.

In the reply filed by respondent No.2, it is admitted in para

Civil Court as well as Revenue Court. It is further stated that it is itself sufficient to establish that dispute between the parties is certainly existing qua the possession of the disputed land.

At the time of arguments, learned counsel for the parties argued as per their pleadings.

From the record, I find that the petitioners stated in the petition that civil litigation is pending between the parties. The State counsel has not denied this fact in the reply, rather, stated that this fact can suitably be replied by the private respondents. Only respondent No.2 has filed the reply, in which he has admitted this fact that civil litigation is pending between the parties, though, it is stated that this fact itself shows that there is dispute between the parties regarding possession over disputed land. It is settled law that when Civil Court is seized of the matter regarding ownership/possession of the suit land between the parties, then the Magistrate cannot continue parallel proceedings under Sections 145 and 146 Cr.P.C.

Learned counsel for the petitioners relied upon the law laid down by the Hon'ble Supreme Court in *Ashok Kumar vs. State of Uttarakhand and others, 2013(1) RCR (Criminal) 961*, in which it is held that when the dispute between the parties over possession of land is pending, Magistrate not to pass order of attachment and Civil Court is to decide as to who was in possession. In that case, the Hon'ble Supreme Court further held that there was no emergency to attach the property. From the facts of the present case also, I find that there is no circumstance to show any emergency to pass the order of attachment of the land under

respondents for initiating proceedings under Section 145 Cr.P.C. The perusal of the application shows that there was no emergency at that time to initiate proceedings under Section 146 Cr.P.C. Furthermore, when the Civil Court is already seized of the matter, the parallel proceedings cannot be held by learned Magistrate under Section 145 Cr.P.C.

Learned counsel for the petitioners further relied upon the law laid down by the Hon'ble Supreme Court in *Ranbir Singh vs. Dalbir Singh, 2002(2) RCR (Criminal) 275*, wherein the dispute over possession and title was pending before Civil Court and the order passed by learned Magistrate under Sections 145 and 146 Cr.P.C. was quashed.

In view of the law laid down by the Hon'ble Supreme Court, when the dispute is already pending before the Civil Court and Civil Court is seized of the matter, parallel proceedings cannot be initiated and continued.

Keeping in view the above discussion, I find merit in the present petition and the same is allowed. The order dated 07.05.2015 passed by learned Addl. Sessions Judge, Ambala, in criminal revision No.84 dated 01.10.2014 as well as orders dated 16.09.2010 and 08.07.2014 passed by learned SDM, Naraingarh along with Calendra under Sections 145 Cr.P.C. registered vide DDR No.20 dated 05.03.2010 and all subsequent proceedings arising therefrom, are hereby quashed.

December 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No