

Sr. No.128

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

CRM-M-27591-2018

Date of decision:05.07.2018

Saravjit Kaur @ Sarabjit Kaur

.....Petitioner

versus

Balraj Kaur and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ramesh Kumar Dhaniya, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed by the petitioner seeking quashing of notice issued under Section 145(1) Cr.P.C. vide order dated 01.06.2018(Annexure P-3) by the Sub Divisional Magistrate, Ratia, District Faridabad.

It is a case of the petitioner that she is in possession of the land measuring about 22 acres for the last more than 10 years and is cultivating the same regularly. Khasra Girdwaris' of the land is in favour of the petitioner since then.

Learned counsel for the petitioner submits that although the Regular Second Appeal qua the same property has already been dismissed by this Court deciding the matter against the petitioner. However, she has approached the Hon'ble Supreme Court in the SLP which is pending adjudication. In the mean-time, respondent No. 2 made an application to the Sub Divisional Magistrate, Ratia for taking action against the petitioner and her son for disturbing the possession of the respondent. That complaint was forwarded by the Sub Divisional Magistrate, Ratia on 09.05.2018 to

SHO, Ratia.

On such reference made by Sub Divisional Magistrate, Ratia, the SHO, Ratia presented a report dated 29.05.2018, showing necessity of appointment of Receiver on the land in question. It is on that report that the Sub Divisional Magistrate had issued notice dated 01.06.2018 to both the parties for appearing on 04.06.2018.

It is contended by learned counsel for the petitioner that Sub Divisional Magistrate has issued the notice in the mechanical manner without recording his '*satisfaction*' that there exists apprehension of Breach of Peace. The second limb of the argument of learned counsel for the petitioner is that, although initially both the parties were called on 04.06.2018, however, later on the Sub Divisional Magistrate has asked the respondents No. 1 and 2 to appear on 05.06.2018; learned counsel submits that both the parties have not been called for the same date. Therefore, learned counsel submits that since both the parties have not been summoned for the same date. Hence, the notice itself is rendered illegal.

Having heard the learned counsel for the petitioner and perusing the record, this Court is of the opinion that the first submission made by learned counsel for the petitioner is factually incorrect. So far as the recording of '*satisfaction*' by the Magistrate before issuing notice to the petitioner is concerned, a perusal of the same shows that the Magistrate has duly recorded the fact that from the police report he has found that there had become tension between the parties over the possession regarding the disputed land. Therefore, there is every possibility of fight between the parties and hence there is possibility of Breach of Peace. This is sufficient recording of satisfaction by the Magistrate as is required by the Section 145

Cr.P.C. The recording of the '*satisfaction*' by the Magistrate is not required to be recorded in particular words. It can not be said that unless the Magistrate uses the word '*satisfaction*' in the notice; it is to be presumed that Magistrate has not recorded his satisfaction that it is a fit case for issuing a notice under Section 145 Cr.P.C. Satisfaction of the Sub Divisional Magistrate can be recorded in a language in more than one ways. Once the Magistrate has categorically written that he has found that there exists an apprehension of Breach of Peace, this is a due recording of satisfaction of Magistrate qua the apprehension of Breach of Peace. Therefore, no fault can be found with the impugned notice on this account.

So far as the other argument of the learned counsel for the petitioners, that notices have been issued for different dates; is concerned, the same is totally irrelevant for the purpose of issuance of notice under Section 145 Cr.P.C. It is for the concerned Magistrate to decide as to whether the parties are to be called on same date or on different dates and also as to which party is to be called on which date. Purpose of issuing notices under Section 145(1) Cr.P.C. is just to enable the parties to the dispute to file their written statements. Keeping in view the situation and level of tension prevalent between the parties, the Magistrate may call the parties on different dates as well. This Section enables the Magistrate to pass further order even on written statements of parties. So he may put the matter at rest on the basis of the statements itself. However, if the Magistrate considers taking evidence in the matter then the evidence cannot be recorded in absence of either of the parties. However, that stage is a stage subsequent to mere issuance of notice under Section 145(1) Cr.P.C. So the notice under Section 145(1) Cr.P.C. cannot be invalidated only for

the reason that the parties were called for different dates to file their written statements.

Notice issued under Section 145(1) Cr.P.C. is only a preliminary notice for passing final order under other parts of this Section. If the Magistrate calls different parties on different dates by issuance of specific notice that does not, by any means, invalidate the notice issued by the Magistrate under Section 145(1) Cr.P.C.

One more fact deserves to be noted is that the petitioner herself has placed another order dated 18.06.2018 on record, showing that the Magistrate has appointed receiver for the land in dispute. This order is not even challenged to be invalid by petitioner and this order shows that after filing of written statements, both the parties, alongwith their counsels were duly heard by the Magistrate on 8.06.2018; before passing the final order. Hence, there is no non-compliance of the procedure prescribed under Section 145(1) of Cr.P.C.

In view of the above, finding no merit in the present petition, the same is dismissed.

5th July, 2018

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*