

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13048-2020(O&M)

Date of decision: 13.10.2020

Vijay Ratra

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.N.K.Malhotra, Advocate, for the petitioner

Mr. Chetan Sharma, AAG, Haryana

Mr. C.B.Goel, Advocate for respondent no.2

ANIL KSHETARPAL, J.

The petitioner has invoked the inherent jurisdiction under Section 482 Cr.P.C seeking quashing of the complaint no. 59/4 dated 11.3.2020 and two orders passed on the same day by the Executive Magistrate in exercise of powers under Section 145, 146 Cr.P.C.

In the considered view of this Court, following questions/issues need adjudication:-

- (i) Whether it is appropriate for an Executive Magistrate under Section 146 (1) Cr.P.C to appoint a Receiver of the property in absence of prima facie finding that the dispute to be one of emergency, or none of the parties was then in such possession as is referred to in Section 145 or if he is unable to satisfy itself as to which of them

was then in such possession of the property in dispute.

(ii) Whether in absence of a dispute likely to cause a breach of peace, the Executive Magistrate is justified in initiating proceedings under Section 145 Cr.P.C.

Some facts are required to be noticed. It is undisputed that the petitioner- Vijay Ratra was running an industry and respondent no.2 – Raj Kumar Ratra later on joined the aforesaid business. The factory premises are constructed over two adjoining plots no. 116 and 117 IDC Area, Hisar Road, Rohtak. After respondent no.2 had joined, the business was being run in partnership under the name and style of M/s Abhishek Industries. On 26.8.2019, a deed of dissolution of the partnership was reduced into writing and the petitioner herein took over all assets and liabilities of the firm as on 26.8.2019. Of course, it was recorded that party no.2 i.e Raj Kumar Ratra has taken over possession of plot no. 116 IDC, Hisar Road, Rohtak. The dissolution deed was forwarded to the District Registrar of Firms, Rohtak who acknowledged its receipt on 17.9.2019.

Respondent no.2 lodged a complaint with Station House Officer, alleging that the petitioner has defrauded him. In the application, it was specifically stated that respondent no.2-Raj Kumar Ratra has stopped going to the factory in August, 2019. In the application, it was prayed that he be provided support in this matter. Thereafter, the police arrested the petitioner on 21.1.2020 in the proceedings under Section 107, 151 Cr.P.C. The Station House Officer also forwarded a Kalendra/recommendation to the Executive Magistrate

on 27.2.2020 for initiating proceedings u/s 145-146 Cr.P.C.. The Executive Magistrate took cognizance thereof, and passed two orders on 11.3.2020; one was to register the Kalendra under Section 145 Cr.P.C and second, appointing a Receiver of the property while exercising power under Section 146 Cr.P.C.. This petition came up for preliminary hearing on 28.5.2020 when notice of motion was issued to the respondents while staying operation and effect of the order dated 11.3.2020 appointing the Receiver.

Pursuant to the notice, two separate written statements have been filed contesting the present petition, one by Sub Divisional Magistrate and second by respondent no.2. The written statement filed by respondent no.2 has been forwarded on official email of this Court. The Office was requested to take a print out thereof and place it on the paper book.

Learned counsel appearing for the petitioner has contended that the proceedings initiated by the learned Executive Magistrate are without jurisdiction. He further contended that it is undisputed that the petitioner is in exclusive possession of the premises from where factory is being run by him exclusively from the date of dissolution of the firm i.e. 26.8.2019. He also contended that the Executive Magistrate has abused its powers. Per contra, learned counsel appearing for the State of Haryana has defended the order passed by the Executive Magistrate. Sh. C.B.Geol, Advocate appearing for respondent no.2 has submitted that as per the deed of dissolution dated 26.8.2019, respondent no.2 was handed over the possession of the property of plot no. 116 and therefore, the petitioner has no right over the plot no.116.

This Court has heard learned counsel for the parties and with their able assistance perused the paper book.

On careful reading of Section 145 of Cr.P.C, it is apparent that an Executive Magistrate can initiate proceedings only if he is satisfied that the dispute is likely to cause a breach of the peace concerning any land or water or the boundaries thereof. Thus, sine qua non for initiation of proceedings under Section 145 is satisfaction of the Executive Magistrate that there exists a dispute likely to cause a breach of peace concerning any land or water or the boundaries thereof. Still further, sub section 4 provides that while deciding the dispute the Magistrate would do so without reference to the merits or claims of any of the party to a right to possess the subject of dispute. In other words, while deciding proceedings under Section 145 Cr.P.C, the Magistrate would proceed with the matter without reference to the right, title or interest of the parties.

Still further, on careful reading of Section 146 of the Code of Criminal Procedure, it becomes apparent that the Magistrate has power to attach subject of the dispute and to appoint Receiver in the following three eventualities:-

- (1) the case to be one of emergency.
- (2) If the Magistrate decides that none of the parties was then in such possession as is referred to in Section 145 Cr.P.C.
- (3) If the Magistrate is unable to satisfy himself as to which of the contesting parties was then in such possession of the subject of dispute.

Now, let us examine the stand of the parties. As noted above, respondent no.2 in his application dated 20.1.2020, addressed to Station House Officer has himself stated that on account of dispute, he had stopped going to the factory in August, 2019. Further, respondent no.2 does not even assert in his complaint dated 20.1.2020 that he is in exclusive possession of the plot no. 116. Further, on reading of para 3 of the written statement filed by respondent no.2, it becomes clear that the plots no. 116 and 117 were merged by removing intervening wall. It has been pleaded by respondent no.2 that the petitioner herein is now not permitting him to construct intervening wall or to have independent gate in order to have access for ingress and egress. Thus, from the pleadings it can be safely concluded that there is no dispute that the petitioner is in exclusive possession of the entire property.

Still further, from the reading of the orders Annexures P-2 and P-5 passed on 11.3.2020, it is apparent that the Executive Magistrate has not recorded its satisfaction that a dispute is likely to cause a breach of peace concerning any land or water or the boundaries thereof. It is mandatory to record such satisfaction before initiating proceedings under Section 145. At the cost of repetition, it may be noted that while deciding proceedings under Section 145 Cr.P.C, the Executive Magistrate is required to decide the matter without reference to the merits or the claim of any of the parties to a right to possess the subject of dispute. In such circumstances, it was not appropriate for the Magistrate to initiate proceedings under Section 145 Cr.P.C. Still further, on reading of preliminary order under Section 145 Cr.P.C as well as order appointing the Receiver, it is apparent that the

Executive Magistrate did not apply his mind. From the reading of the orders (Annexures P-2 and P-5), it becomes clear that the Magistrate was not clear about details of the property for which he ordered the appointment of the Receiver. The particulars of the property for which the Receiver has been appointed have not been given. In absence thereof, it was left to discretion of the Receiver to take over the entire premises occupied by M/s Abhishek Industries which is constructed over plots No. 116 and 117.

Still further, the Magistrate while passing order under Section 146 Cr.P.C has failed to record that the present case falls in any of the three eventualities specified in the earlier part of the judgment. The Magistrate is required to record brief reasons as envisaged by Section 146 Cr.P.C. before appointing the Receiver.

Still further, the police had already arrested the petitioner under Section 107, 151 Cr.P.C. There is neither any allegation nor any prima facie finding that thereafter any dispute arose between the parties which was likely to cause a breach of the peace. In fact, from the reading of the Kalendra and the application, it becomes clear that the concerned Station House Officer while forwarding the Kalendra has only recorded that both the parties can quarrel with each other at any time. In the considered view of this Court, the concerned Station House Officer has powers under Indian Penal Code as well as Code of Criminal Procedure to take action if there is apprehension of quarrel between the parties. Ordinarily likelihood of a quarrel cannot be a ground to attach the disputed property and appoint the Receiver thereof.

Keeping in view the aforesaid facts, this Court is of the considered view

that the proceedings initiated by the Executive Magistrate and the order appointing the Receiver is neither proper nor justified in the facts of the case. Hence, the proceedings under Section 145 Cr.P.C and consequent order under Section 146 Cr.P.C are quashed. The parties shall be at liberty to get their rights adjudicated from the Civil Court.

The petition stands allowed.

13.10.2020

rekha

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No