

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39182-2015 (O&M)

Decided on 29.08.2022

Nath Singh

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

Coram: Hon'ble Mr. Justice Sandeep Moudgil

Present: Mr. Raman Mohinder Sharma, Advocate for petitioner

Mr. Shubham Kaushik, AAG Punjab

Sandeep Moudgil, J.

This petition under Section 482 CrPC has been filed by the petitioner seeking quashing of the order dated 10.11.2015 (Annexure P5) passed by learned Additional Sessions Judge, Patiala as well as the order dated 19.10.2015 (Annexure P3) passed by Sub Divisional Magistrate, Samana vide which Section 145 CrPC has been invoked over the land in dispute on the application/complaint of a third person who, allegedly, is not a member of the Society to whom the land in dispute was allotted in the year 1976.

Brief facts of the case are that the land in dispute is a nazool land, which was allotted to the Kadrabad SCLO Sabha (in short, the Society) in the year 1976. There are about 15 members of the Society. Every year, the audit of the Society is conducted. The Sarpanch of the village, Naib Singh started alluring some person of Harijan community to provide them plots in the land allotted by the State Government to the aforesaid registered society and as such he started making false complaints/applications to check the accounts and records of the society and to give the plots to the Harijans out of the aforesaid land allotted to the society. The SDM got conducted enquiry and found the

account records correct as per regular audit. The SDM sent his report dated 08.07.2014 to the Deputy Commissioner, Patiala. Thereafter, the Society through its President and Secretary filed Civil Suit No.69 dated 26.05.2014 on the ground of illegal and forcible interference by the private respondents, namely, Mohinder Singh in the peaceful possession of the land in dispute. The learned Civil Court vide order dated 19.08.2015 (Annexure P1) restrained the respondents from interfering and taking forcible possession of the land in dispute. The respondent party through their political influence got registered a kalandra vide DDR No.06 dated 17.06.2015 through Sant Ram s/o Teja Singh stating that the petitioner is giving the nazool land in dispute which is relating to Harijan and Ramdasia community on lease and are usurping the entire money; they are not paying anything to the remaining pool families; they have constituted a fake LOC committee and its members and President are distributing the income of the land among themselves and as such the land may be got vacated from the possession of the petitioner. The said Kalandra under Section 145 CrPC was decided by the SDM Samana vide order dated 19.10.2015 (Annexure P3) holding that the land in dispute is a nazool land and the area was allotted to the members of Harijan and Balmiki community and as per khasra girdawari, this area is owned by Provincial Government and is under the cultivation of Harijan Society and since both the parties are claiming their possession of this land, the SDM under Section 145 CrPC appointed Tehsildar, Samana as Receiver. Aggrieved by this said order, the petitioner filed revision petition but the same was dismissed by learned Additional Sessions Judge, Patiala holding that the revision petition is not maintainable

vide order dated 10.11.2015 (Annexure P5). Aggrieved the petitioner has approached this Court.

Learned counsel for the petitioner contends that it is well settled that where the dispute is pending before the Civil Court and when the petitioner is in legal and settled possession of the land and the Civil Court has restrained the opposite party from interfering in the peaceful possession, then order under Section 145 & 146 CrPC cannot be passed by the Magistrate. Reliance is placed on the Apex Court judgment in **Ranbir Singh vs. Dalbir Singh 2002(2) RCR (CrI) 375** and **Charan Singh vs. SDM Jalandhar 1992 (3) RCR (CrI) 12.**

It is further contended that revision against the order passed by the Magistrate is maintainable as has been held in **Varinder Singh vs. State of Haryana 1998(2) (CrI) 372.**

Notice of motion was issued on 19.11.2015 and operation of the impugned orders were stayed. Respondent No.1-State had filed reply dated 18.01.2016 and the said reply was adopted by respondent No.2 as averments made on his behalf as is evident from the order dated 04.09.2017.

The petitioner has placed on record proceeding book (Annexure P13) vide which resolution was passed on 20.04.2022 and authorizing the petitioner Nath Singh to engage, pursue the case, implead the society as party, incur the expenditure and sign documents in the present case.

The reply filed by Sukhdev Singh, PPS, Deputy Superintendent of Police, Samana is very vague and cryptic which suggests that the same has been filed in a very casual and mechanical way.

Having heard learned counsel for the parties and after going through the record, I am of the considered view that the orders passed by the Additional Sessions Judge as well as the SDM Samana cannot be allowed to sustain. I say so for the reason that when Civil Suit was pending between the parties and the Civil Court had already restrained the opposite party from interfering in the peaceful possession of the nazool land which was under the possession of the petitioner/Society, the SDM, Samana could not have invoked Section 145 CrPC holding that the order dated 19.08.2015 by in Case No.69 of 26.05.2014 is not having any concern with the present proceedings. Section 145 CrPC could have been invoked when there was no previous lis pending between the parties and in that case, the SDM is having full powers to take necessary action in order to avoid any tussle between the parties.

As far as maintainability of the revision petition is concerned, the learned Additional Sessions Judge has erred in holding that the revision is not maintainable and if any order passed under Section 145 CrPC by the Magistrate, a revision against the said order is maintainable as the order dated 19.08.2015 passed by Civil Court, Samana restraining the respondents from interfering in the land in dispute, was passed much earlier to the impugned order passed by the SDM, Samana.

In **Amresh Tiwari vs. Lalta Prasad Dubey & Anr. (2000(4) SCC 440,** the Hon'ble Supreme Court held that the when Section 145 proceedings were commenced after the filing the civil suit and an order of status quo had already been passed by the Civil Court and when no final order was passed, the ratio laid down in **Ram Sumer Puri Mahant vs. State of UP and others,**

(1985) 1 SCC 427 would fully apply. The Hon'ble Supreme Court in Ram Sumer Puri Mahant case (supra) held that :-

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue."

For the reasons afore-stated, this petition is allowed and the order dated 10.11.2015 (Annexure P5) passed by learned Additional Sessions Judge, Patiala as well as the order dated 19.10.2015 (Annexure P3) passed by Sub Divisional Magistrate, Samana are quashed.

12.09.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No