

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.243 OF 2023

Robert Alex Correia and Anr. ... Petitioners

V/s.

Primas Sebastian Correia and Ors. ... Respondents

Mr. Anil D'Souza a/w Ernest Tuscano for the
petitioners.

Mr. Arfan Sait, APP for the State.

Mr. Niranjana Mundargi i/b Mr. Madhur Surana for
respondent No.1.

Mr. M.M. Sonawane, PSI, Arnala Sagari Police Station.

CORAM : AMIT BORKAR, J.

DATED : MARCH 16, 2023

P.C.:

1. The petition is directed against the order of the Revisional Court, setting aside the order passed by the Executive Magistrate under Section 145 of the Code of Criminal Procedure, 1973 (hereafter "Code", for short) protecting possession of the petitioners.

2. The facts relevant for adjudication of the issue involved in short are as under:

3. On 11th May 2021, petitioners lodged a complaint with Arnala Sagari Police Station, Virar, under Section 145 of the Code.

On 8th July 2021, Arnala Sagari Police Station filed a report bearing No.406 of 2021 with the Tahsildar (Executive Magistrate), Vasai. On 28th October 2021, the Executive Magistrate protected the Applicant's possession of the property in dispute. On 9th November 2021, the Revision filed by respondent No.1 to 4 herein was allowed by the Additional Sessions Judge, setting aside the order of the Executive Magistrate and granted a stay to the order dated 28th October 2021. By order dated 19th September 2022, the Sessions Judge set aside the order of the Executive Magistrate.

4. The facts which are not in dispute having a bearing on the maintainability of proceedings are as under:

I) On 25th June 2021, the petitioner filed suit for partition, separate possession and permanent injunction not to disturb the petitioner's possession over the suit properties.

II) The property in dispute (subject matter of proceedings under Section 145) is in the suit at Sr. No. 1 to 3.

III) Along with the said suit, the petitioner on 25th June 2021 sought relief of injunction not to disturb his possession over the properties in dispute.

IV) Initiation of proceedings under Section 145 is dated 8th July 2021, in the form of the report of the concerned Police Station.

5. Considering the facts stated above, it is undisputed that on the date of submission of the report by the local Police Station under Section 145 of the Code, the suit seeking substantive relief

of injunction not to disturb the alleged possession of the petitioner over the property in dispute and consequential application for temporary injunction restraining respondent Nos.1 to 4 from disturbing possession over property in dispute was pending. If this be so, the law on the point is no longer ***res integra*** in view of the judgment of the Apex Court in **Amresh Tiwari V. Prasad Dubey and Anr.**, reported in (2000) 4 SCC 440. The Apex Court in paragraphs Nos. 13 and 14 held as under:-

“13. We are unable to accept the submission that the principles laid down in **Ram Sumer** Case would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. In our view **Ram Sumer** Case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings, i.e. Section 145 proceedings should not continue.

14. Reliance has been placed on the case of **Jhummal V. State of M.P.** It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 of the Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case, the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil

proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case, the civil suit had been filed first. An order of status quo had already been passed by the competent civil Court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case, the ratio laid down in **Ram Sumer** case fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate.

6. It appears that in **Amresh Tiwari V. Prasad Dubey and Anr.** reported in (2000) 4 SCC 440; the Apex Court delivered two principles in relation to proceedings under Section 145 of the Code.

I) When parties are in the position to approach the Civil Court for adequate protection of property during the pendency of dispute, parallel proceedings under Section 145

should not continue.

II) After parties to the dispute under Section 145 applied for the grant of the same relief before the civil court and granted by the Civil Court, proceedings under Section 145 should not be continued.

7. In the facts of the present case, as recorded earlier, on the date of initiation of proceedings under Section 145 of the Code, the substantive suit, inter alia, claiming relief not to disturb the possession of the property in dispute, was pending. Moreover, the application for the temporary injunction not to disturb the petitioner's possession over the property in dispute was also pending. Therefore, in that view of the matter, in my opinion, the order passed by the Revisional Court need not be interfered with.

8. The advocate for the petitioner submitted that the scope of interference of the Revisional Court is limited to the extent of scope as interpreted by the Apex Court in the case of **Amit Kapoor v. Ramesh Chander & Anr.** reported in (2012) 9 SCC 460. In paragraphs 11 to 13, the Apex Court has held as under:

“11. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code.

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set

right a patent defect or an error of jurisdiction of law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice *ex facie*. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afforested. Even framing of charge is a much advanced stage in the proceedings under the Cr.PC.”

9. In the facts of the case before the Apex Court, the Court was concerned with the power of Sessions Judge under Section 397 of the Code against the order of framing of charge. However, in the facts of the present case, the order having been passed by the quasi-judicial authority in the exercise of power under Section 145

of the Code, the parameters laid down by the Apex Court in a proceedings arising out of framing of charge have no application.

10. He next relied upon the judgment in the case of **Jummamal Vs. State of Madhya Pradesh**, reported in (1988) 4 SCC 452. contending that the Apex Court, while deciding **Ram Sumer Puri Mahant Vs. State of U.P.**, reported in (1985) 1 SCC 427:1985 SCC (cri) 98, has held that concluded order under Section 145 made by the Magistrate of competent jurisdiction should not be set at naught merely because the unsuccessful party has approached the Civil Court. It is open for the unsuccessful party to move to Civil Court to challenge the order of the Executive Magistrate. In the facts of the present case, on the date of initiation of proceedings under Section 145 of the Code, the substantive suit, claiming relief not to disturb the possession of the property in dispute, was pending. Moreover, it must be noted that the judgment in the case of **Amresh Tiwari** considers the judgment of **Jhummal** and **Ram Sumedh**. The judgment in the case of **Amresh Tiwari** was delivered by three judges of the Apex Court, while the judgment in the case of **Jhummal** was delivered by two judges of the Apex Court. Hence, the judgment of the larger bench shall be binding on this Court.

11. For the aforesaid reasons, in my opinion, no case for interference is made out.

12. The Writ Petition stands dismissed.

13. It is clear that the observations made in the present order are

restricted to consider the validity of the order passed by the Revisional Court, and the same shall not influence the Civil Court while deciding the substantive rights of the parties.

(AMIT BORKAR, J.)