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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16044-2021 (O&M)
DECIDED ON: 24.02.2023

GURDOR SINGH AND ANR.

.....PETITIONERS

VERSUS

STATE OF PUNJAB AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. N.K. Manchanda, Advocate
for the petitioners.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Anantdeep Singh Sandhu, Advocate
for respondents No.5 to 8.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court has been invoked under Section 482 Cr.P.C., for quashing the proceedings under section 145 Cr.P.C., pending before Sub Divisional Magistrate, Moga/respondent No.2 on Kalandra/Rapat No.18 dated 28.10.2020, titled as “Atma Singh etc. vs. Gurdor Singh etc.” (Annexure P-5) with all consequential proceedings arising therefrom.

The petitioners being aggrieved of initiation of simultaneous proceedings under Section 145 Cr.P.C., before the Sub Divisional Magistrate, Moga in a Kalandra/Rapat No.18 dated 28.10.2020, despite the civil dispute already pending before the competent courts taking a protection of Section 482 Cr.P.C.

Having the sequence of events in the background to the effect that the petitioner No.2 namely Malkiat Singh is claiming owner in possession of the land in question situated in the village Mangewala Tehsil & District Moga claiming himself to be in peaceful, continuous, lawful and exclusive possession for the last more than 25 years. It is also the case set forth by the petitioners that respondents No.5 to 8 tried to dispossess them forcibly and illegally, though having no right title or interest over the suit land.

Learned counsel for the petitioners urges that a civil suit for grant of decree of permanent injunction was filed against the respondents no.5 to 8 before the Civil Judge (Jr. Division), Moga accompanied by an application under Order XXXIX, Rules 1 & 2, which is dated 02.06.2020 (Annexure P-2).

The attention of this Court has been drawn to an order dated 21.08.2020 (Annexure P-3), whereby the application under Order XXXIX, Rule 1 & 2 CPC was allowed and the respondents No.5 to 8 were restrained from interfering in peaceful possession of the petitioner No.2 with a further direction that he shall not be ejected and dispossessed from the suit property illegally, forcibly, unjustly and without following due process of law during the pendency of the civil suit.

It has also been submitted that respondents No.5 to 8 preferred an appeal against the aforesaid order, which was dismissed by the Additional Sessions Judge, Moga vide order dated 27.10.2020 (Anneuxre P-4) and it is on that account having failed before the Civil Court on 28.10.2020 i.e., very next day, in connivance with respondent No.4-SHO, respondents No.5 to 8 moved a Kalandra/Rapat No.18 against the petitioner No.1 and Jasvir Singh s/o Gurnam Singh without impleading petitioner No.2 purposely and deliberately

with the intent of misleading the Court of Sub Divisional Magistrate, Moga-respondent No.2, who has initiated the proceedings under Section 145 Cr.P.C., and issued summons to the petitioners without considering the evidence on record vide an order dated 02.11.2020 (Annexure P-6).

The counsel for the petitioner has finally concluded the submissions with the prayer for quashing of Kalandra proceedings under Section 145 Cr.P.C., on the ground that once matter is sub-judiced before the Civil Court, the proceedings under Section 145 Cr.P.C., 1973 cannot be initiated.

Learned counsel appearing on behalf of respondents No.5 to 8 submits that after having filed reply dated 01.11.2021 to the instant petition opposes the prayer for quashing of the proceedings under Section 145 Cr.P.C. It is vehemently pressed to impress this Court that respondents No.5 to 8 were in cultivating of the possession of the suit land, as is evident from the incident narrated in Kalandra No.18 dated 28.10.2020 (Annexure P-5), wherein, it has been categorically pleaded that the respondents have sown the Paddy crop and after this court invested the standing wheat crop was harvested and proceeded of the same was deposited in the nationalised bank by respondent No.2-Sub Divisional Magistrate, Moga and finally folded the arguments submitting that the respondents No.5 to 8 are bona fide purchaser with consideration of the suit land, who are facing irreparable loss and injury.

Heard counsel for the respective parties.

I have examined the record and given a thoughtful consideration to the submissions made before this Court and the proposition turns out to be that whether during the pendency of civil proceedings qua the same suit land,

initiation of action under Section 145 Cr.P.C., would be maintainable or not.

This Court cannot loose sight of the fact that the civil suit has been filed prior in time i.e., on 02.06.2020, whereas proceedings under Section 145 Cr.P.C., was initiated on 28.10.2020, after the respondents No.5 to 8 failed in an application under Order XXXIX Rule 1 & 2 CPC. Even in appeal before the Additional District Judge, Moga by virtue of which the interim injunction order dated 21.08.2020 (Annexure P-3) was upheld, whereby respondents No.5 to 8 were restrained from interfering in the peaceful possession of the petitioner and further have been directed not to eject-dispossessing the petitioner No.2 from suit property, except in due course of law till the adjudication of that civil suit. There cannot be a dispute to the proposition that the decree passed by a civil suit will be binding upon the Court of Sub Divisional Magistrate in a proceedings under Section 145 Cr.P.C., as well on account of the legal aspect that Civil Court is the only Competent Court to decide the question of title as well as possession between the parties.

I am oblivious of the fact that if proceedings under Section 145 of Cr.P.C., 1973 are allowed to continue, the Magistrate has to make an order in terms of Section 145(1) Cr.P.C., in writing stating the ground of his being so satisfied before calling the parties, so as to put their respective claim with respect to the fact of actual possession over the disputed land and in the absence of recording of satisfaction as envisaged under Section 145(1) Cr.P.C., any such order would be in nullity in the eyes of law.

A perusal of the order dated 02.11.2020 (Annexure P-6) impugned before this Court is absolutely a nullity, wherein no reason

whatsoever has been observed and is far away from adhering to the requirement of Section 145(1) Cr.P.C.,, which is mandate of Apex Court as rendered in ***Amresh Tiwari vs. Lalita Prasad Dubey and Another, 2002(2) RCR (Cr.) 614***. The operative part of the judgment reads as under:-

“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's case (supra) 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.”

In another judgment by the Supreme Court reported as ***Ram Sumer Puri Mahant vs. State of U.P. And others, 1985(1) SCC 427***, it has been held:-

"Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under Section 145. Code of Criminal Procedure ('Code' for short), and attachment of the property at the instance of respondents 2-5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No. 87/75 filed in the Court of the Civil Judge at Ballia wherein the question of title

was gone into and by judgment dated February 28, 1981, the said suit was dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents 2-5 were the plaintiffs and we gather from the counter-affidavit filed in this Court that an appeal has been carried from the decree of the Civil Judge and the same is still pending disposal before the appellate Court. The assertion made in the petition for Special Leave to the effect that respondents 2 to 5 are close relations has not been seriously challenged in the counter-affidavit. 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 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 an 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 and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceedings under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate Judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.”

In the light of aforesaid case law and considering the admitted factual sequence leaves no doubt in the mind of this court that there is no propriety behind allowing the proceedings under Section 145 Cr.P.C., to continue, in view of the fact that parties have already approached the Civil Court and the order of Criminal Code is always be subject to the decision by the Civil Court. The Civil Court would be the most appropriate forum to take care of the grievance raised in the proceedings under Section 145 Cr.P.C., and an interim order has been passed, which reasonably protected the interest of both the parties. It would also be inappropriate and unjustified to enter into the merits of the plea on facts raised by other party before this Court, which is domain of the Civil Court to adjudicate. Therefore, the proceedings initiated under Section 145 Cr.P.C., 1973 are ordered to be quashed and the parties to the lis are at liberty to avail whatsoever remedy before the Civil Court in the suit, which is already pending for the purpose of protecting their interests.

Accordingly, the order dated 02.11.2020 (Annexure P-6) along with the proceedings under Section 145 Cr.P.C., are hereby quashed.

In view of the aforesaid terms petition is allowed.

(SANDEEP MOUDGIL)
JUDGE

24.02.2023

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>