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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 11.09.2023

+ **CRL.M.C. 6497/2023, CRL.M.A. 24391/2023, CRL.M.A. 24392/2023 & CRL.M.A. 24393/2023**

MR. RAVINDER SHARMA Petitioner

Through: Mr. Debopriyo Moulik & Mr. Ravi
Prakash, Adv.

versus

RUPENDER SINGH WALIA AND ORS. Respondents

Through: Mr. Sandeep Sethi, Sr. Adv., Mr. Shri
Singh, Mr. Vikhyat Oberoi, Ms.
Jagriti Pandey, Mr. Ankit Kakkar, Mr.
Onmichon Ramrar, Ms. Surabhi
Vaya, Avs.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present petition has been filed praying for quashing of the judgment dated 28.08.2023, whereby the learned Additional Sessions Judge, South District Saket, New Delhi has dismissed the CRL. REV. P. 248/2021 filed by the petitioner
2. A criminal revision had been preferred by the present petitioner against the order dated 16.12.2021 passed by the learned SDM, Mehrauli under Section 145 Cr.P.C. The complaint under Section 145 Cr.P.C. was filed by the respondent herein.

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3. The learned counsel appearing for the petitioner submits that the petitioner is aggrieved by the following direction given by the SDM in his order dated 16.12.2021:

“The case may be close be with direction to both the parties to maintain peace and tranquillity also the complainant may be allowed to repair / reconstruct the damaged wall and any supporting structure for safety of his personal property. The complainant is also allowed for installing CCTV camera.”

4. Referring to the above quoted direction, the learned counsel for the petitioner submits that passing of such a direction is beyond the purview of the SDM’s jurisdiction under Section 145 Cr.P.C. Elaborating further, he invites the attention of the court to the observations recorded in the order of the SDM to the effect that dispute was civil in nature and the parties have equally efficacious remedies before the civil court and the matter does not involve any further threat to public peace and tranquillity, therefore, the proceedings under Section 145 CrPC were dropped.

5. He submits that as there was no further threat to public peace and tranquillity and the proceedings under Section 145 Cr.P.C. were dropped by the learned SDM, therefore, the learned SDM could not have gone ahead to pass the order allowing the respondent to repair / reconstruct the damaged wall and any supporting structure. He submits that breach of peace is *sine qua non* for passing any order under Section 145 CrPC.

6. He further submits that against the order of SDM the petitioner had preferred Criminal Revision. The revisional court vide impugned order dated 28.08.2023 observed that the direction to allow installation of CCTV camera was not justified as it appears that no such camera was installed there before. However, as regard the respondent being allowed to repair /



reconstruct the damaged wall and supporting structure, no illegality was found in the same by the revisional court.

7. He submits that the revisional court failed to appreciate that the impugned direction does not fall within the purview of Section 145 Cr.P.C. He relies upon the decision of this court in ***Jagdish Gandhi & Anr. Vs. State & Anr. 2008 SCC OnLine Del 1134*** to contend that in order to take preventive action under Section 145 Cr.P.C. two essential conditions must be satisfied viz., (i) there must be dispute relating to land or other objects mentioned in sub-section (1) of Section 145 Cr.P.C. and (ii) the dispute is likely to cause a breach of peace. He also relies upon the decision of Allahabad High Court in ***Mela Ram Vs. Sadhu Ram in CRL REV No. 805/1980 decided on 25.09.1980.***

8. *Per contra*, Mr. Sandeep Sethi, learned senior advocate, appearing for the respondent / complainant on advance notice, invites the attention of the court to order dated 26.08.2020 passed by learned SDM under Section 145 Cr.P.C. to contend that learned SDM had ordered to stop any construction activity on the land in question and directed both the parties to maintain *status quo* on the said land till further orders.

9. He has handed over a compilation of various orders and proceedings, which is taken on record. Referring to general dairy entry dated 28.08.2020 made by the police, he submits that the respondent had called the police to inform that the wall of their house has been broken and a gate was being installed. The police official who attended the call visited the site and found that the petitioner has violated the order of *status quo* of SDM, Mehrauli and accordingly a report was sent to the SDM.

10. He further submits that the respondent had also moved an application



before the learned SDM seeking a direction to rebuild the broken wall, install a CCTV camera, to remove debris from the main entrance gate of the farm in question and to open and use the guard room constructed adjacent to the gate. Inviting attention of the court to the report prepared by SI Satyendra Gulia, he contends that the said police officer on his visit to the farm house in question on 20.12.2021 found that at the main gate the boundary wall has been repaired by the residents including the respondent herein and the repaired boundary wall and main gate were found painted.

11. He contends that the directions given by the learned SDM to restore *status quo ante* by allowing the respondent / complainant to repair / reconstruct the wall along with supporting structure is only an incidental order which the learned SDM could have passed as held by the Division Bench of the Allahabad High Court in ***Smt. Kaniz Fatima Bibi Vs. State of U.P. and Ors. AIR 1963 All 148.***

12. He further submits that the revisional court has also recorded that it is not the case of the petitioner herein that no such wall existed there earlier or that the same was not demolished at his instance.

13. He therefore submits that the order of the revisional court does not call for any interference.

14. I have heard the learned counsel for the petitioner as well as the learned senior counsel for the respondent and have perused the record.

15. The short question that arise for consideration in the present petition is that whether the learned SDM, Mehrauli was within his rights to permit the residents to repair / reconstruct the damaged wall alongwith supporting structure especially when the learned SDM had decided to drop the proceedings under Section 145 Cr.P.C on the ground that the matter does not



involve any further threat to public peace and tranquillity and it was opined to be a dispute of civil nature.

16. Before proceeding further it will be apposite to refer to the order dated 26.08.2020 passed by the learned SDM whereby he ordered *status quo* in the following terms:-

“considering the above and after examining all the facts in the instant matter, the court hereby orders to stop any construction activity at the above land and direct both the parties to maintain status quo on the said land till further orders”

17. Eventually the learned SDM passed an order dated 16.12.2021 in case No. 462/V&P/SDM(M)/2019 whereby he closed the proceedings under Section 145 Cr.P.C. The relevant part of the order reads as under:-

“As dispute was civil in nature and the parties have their equal efficacious remedies under civil court and hence the matter does not involve any further public peace and tranquility therefore the proceedings under section 145 are dropped.

The complainant is having every apprehension that if the broken wall of his farm is not reconstructed the complainant will suffer huge loss in terms of personal safety as it is next to impossible to protect the property from the encroachers/ bad elements. As the complainant prayed in various applications regarding permission be granted to repair/reconstruct the wall damaged by Ravi Sharma and to install CCTV.

The case may be close be with direction to both the parties to maintain peace & tranquility also. The complainant may be allowed to repair/reconstruct the damaged wall and any supporting structure for safety of his personal property. The complainant is also allowed for installing CCTV camera.

Further, SHO is directed to ensure peacefully physical possession of the lawful owners Sh. Rupender Singh Walia, Sh. Rohit Virmani, Sh. Mayank Gupta & Sh. Madhusudan and to



restrain any person from disturbing the peaceful possession of the lawful owners. The SHO is directed to ensure that no change in approach road shall be made by any party involved”.

18. Since the issue concerns the proceedings under Section 145 Cr.P.C., advantageous it would be to refer to the said provision, which reads as under:-

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression " land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute,

(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of



the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

(5) Nothing in this section' shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub- section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub- section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub- section shall be served and published in the manner laid down in sub- section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such



- proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.*
- (8) *If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.*
- (9) *The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.*
- (10) *Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.”*

19. The learned revisional court in its impugned order has held that the learned SDM has merely passed the necessary directions to restore *status quo ante* as admittedly the wall in question was demolished after passing of an order of *status quo* on 26.08.2020. Placing reliance upon the decision of Allahabad High Court in Smt. Kaniz Famita (supra), the revisional court has further held that the order passed by learned SDM can be termed as an incidental order, passing of which is well within the power of learned SDM. The relevant part of the impugned order reads as under:-

“11. Record shows that the wall in question which has been ordered to be rebuilt by way of impugned order and has been actually so built in pursuance to the same, was demolished/damaged at the instance of revisionist herein on 28.08.2020 regarding which a call was made to police at 100 number which was recorded vide GD No.34A dated 28.08.2020, PS Fatehpur Beri. When SI Laxman Singh alongwith other police officials reached at the spot for attending the call, one Mr. Pradeep and Mr. Maniram, labourers allegedly sent by the



revisionist were found there. They told the police officials that they were demolishing the wall as they had been sent there to install a gate. They were detained u/s 65 DP Act and were released later on after inquiry. It is not the case of revisionist that no such wall existed there earlier or that same was not demolished at his instance. The revisionist has chosen to remain blissfully silent on this material aspect, however he is objecting to the order which permitted the respondents to repair/reconstruct that wall alongwith supporting structure. In a way, he is trying to reap the benefits of his own wrong which is not permissible in law. By way of impugned order, Ld. SDM has merely passed necessary directions to restore status quo ante as admittedly the wall in question was demolished after passing of order of status quo on 26.08.2020. Such an order can be termed as an “incidental order” which was well within the power of Ld. SDM as held by Hon’ble Allahabad High Court in Smt. Kaniz Fatima Bibi Vs. State of U.P. and Ors. AIR 1963 All 148. Holding otherwise will be travesty of justice. It is good fortune of the revisionist that no action was taken against him for violating the status quo order dated 26.08.2020. Having said that, this Court is of the view that the direction to allow installation of CCTV camera was not justified as it appears that no such camera was installed there before. The judgments relied upon by revisionist are distinguishable on facts.

12. Considering the above discussion, this Court is of the view that there is no illegality in the impugned order dated 16.12.2021 as far as same permitted repair/re-construction of damaged wall and supporting structure, however the direction to allow installation of CCTV camera was not within the power of Ld. SDM.

Revision petition stands disposed of in above terms.”

20. A perusal of the impugned order passed by the revisional court shows that the revisional court has in the operative part of its order observed that *it is not a case of revisionist that no such wall existed there earlier or that same was not demolished at his instance. The revisionist has chosen to*



remain blissfully silent on this material aspect, however, he is objecting to the order which directed the respondents to repair / reconstruct that wall alongwith supporting structure. In a way, he is trying to reap the benefits of his own wrong which is not permissible in law. There is no challenge made by the petitioner's counsel to this finding recorded by the learned revisional court though specific reliance was placed on this by Mr. Sethi, the learned senior counsel for the respondent.

21. Further, from a perusal of the report dated 20.12.2021 submitted by SI Satyendra Gulia before the learned SDM it appears that the boundary wall has since been repaired pursuant to the order of the learned SDM dated 16.12.2021. On a query put by the court as to whether the wall has been repaired, Mr. Sandeep Sethi, learned senior counsel for the respondent, on instructions, responded in affirmative, which position was also not disputed by the learned counsel appearing on behalf of the petitioner.

22. In so far as the controversy involved in the present case is concerned, the same is no more *res integra*. The Allahabad High Court in **Kaniz Fatima Bibi (supra)** observed that after passing an order to drop proceedings under Section 145 Cr.P.C. on the premise that there is no apprehension of breach to peace, the SDM becomes *functus officio* and he has no jurisdiction to hold any proceedings under the provisions of Section 145 Cr.P.C., however, he continues to have a right to pass an incidental order like restoring the *status quo ante*. The relevant part of the decision reads as under:-

22. We accept that after passing an order dropping proceedings under Sec. 145, Cr.P.C. the Magistrate has no further jurisdiction to take any proceedings under the provisions of Sec. 145, Cr.P.C. His jurisdiction to pass



orders depends on the existence of an apprehension of a breach of the peace. Once he finds that there is no such apprehension, he has no jurisdiction to take any proceedings under Sec. 145, Cr.P.C. It, therefore, clearly follows that he would become functus officio so far as the enquiry as regards the possession on the date of the preliminary order or in case of dispossession, within sixty days of the preliminary order is concerned. The Magistrate will certainly have no jurisdiction to hold any such enquiry which could be held by him only under the provisions of Sec. 145, Cr.P.C.

23. But it is not the same thing to say that he would have no right to pass an incidental order. Certain action was taken by him under the belief that he had jurisdiction to proceed under Sec. 145, Cr.P.C. and it is only right that he should have inherent powers to restore the conditions that existed before he took action or in other words to wind up the proceedings by restoring the status quo ante. Again the proceedings under Sec. 145, Cr.P.C. having been dropped, the attachment could not be continued. There may be some moveable property or the proceed of some crop etc. that may be in possession of the court or, as in the present case, persons appointed by the Court. The Magistrate cannot simply, wash his hands of the matter. He must pass some orders as regards possession of these articles and moneys even if he decides to keep them in his possession till a decision by the civil court. It is obvious that certain orders have to be passed. We are of the opinion that if there were no such power conferred under Sec. 517, Cr.P.C, the Magistrate would have inherent jurisdiction to pass orders in the nature of winding up proceedings, restoration of status quo ante and pass such orders as may be necessary for preservation of the property till the rights of the parties could be determined. Sec. 517, Cr.P.C., however, confers specific powers on the Magistrate. It reads:-

“When an inquiry or a trial in any Criminal Court



is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.”

23. Similar view has been taken by the High Court of Andhra Pradesh in ***Wajid Mirze v. Mohammad Ali Ahmad & Ors., 1981 SCC OnLine AP 164.*** The Andhra Pradesh High Court relied upon the judgment of Allahabad High Court in *Smt. Kaniz Famita Bibi (supra)* and various other decisions and observed that after dropping the proceedings under Section 145(5) CrPC the Magistrate does not become *Functus Officio* and retains the jurisdiction to make an incidental or consequential orders by way of winding up of the proceedings and restore possession of the attached property to the party or persons from whom the possession had been taken over at the time of attachment. The relevant part of the decision reads as under:-

“19. On dropping the proceedings under Sec. 145(5) Cr.P.C. the Magistrate does not become Functus Officio. He has the jurisdiction to make any incidental or consequential orders by way of winding up of the proceedings and restore possession of the attached property to the party or persons from whom the possession had been taken over at the time of attachment. But, the question as to who was in possession at the time of attachment of the property cannot form the subject matter of enquiry as the jurisdiction to make any enquiry as to who was in possession disappears the moment the proceedings are dropped under Section 145(5) CrPC by the Magistrate. He can, however ascertain from the material already on record as to the person or persons from whom the possession was taken at the time



attachment was ordered under section 146(1) Cr.P.C. If he is satisfied by the material on record, such as panchanama for attachment that any particular person or party was in possession at the time of attachment of the property, he should make an order directing restoration of the property to the person from whom the property was attached and taken over. In case it is not possible to restore Status-Quo-Ante, the appropriate order for the Magistrate to pass is to retain the property in the custody of the Court and direct the parties to have recourse to a Civil Court to obtain possession of the property.”

24. In the present case, the learned SDM had passed an order of *status quo* on 26.08.2020, but despite the said order of *status quo* it appears that the petitioner had demolished the wall in question. Therefore, the SDM while dropping the proceedings under section 145 CrPC vide order dated 16.12.2021 on the ground that the apprehension for breach of peace and tranquility no more exists, was well within his jurisdiction to pass necessary directions to restore *status quo ante*, which is in the nature of an incidental order and is permissible under section 145 CrPC.

25. That apart, the wall also stands repaired / reconstructed pursuant to the order dated 16.12.2021 passed by the learned SDM. If any civil dispute still exists with regard to the wall, it is open to the aggrieved party to take recourse to the civil court.

26. The decisions relied upon by the petitioner are not applicable to the situation at hand. In *Jagdish Gandhi (supra)* a co-ordinate bench of this Court has laid down that in order to take preventive action under Section 145 CrPC, two essential conditions must be satisfied - (i) there must be dispute relating to land or other objects mentioned in sub-section (1) and (ii) the dispute is likely to cause a breach of peace. There is no dispute with



regard to this proposition. The said decision is not on the point whether after dropping the proceedings under Section 145 CrPC, the SDM retains the jurisdiction to pass incidental orders. Likewise, the decision of the Allahabad High Court in *Mela Ram (supra)* has been rendered on the facts of that case. In the said case the revisional court ordered the SDM Roorkee to direct the SHO concerned “*to ensure that the tractor in question is taken out through the disputed land and for that purpose the walls raised on the disputed land be dismantled.*” In this backdrop it was simply observed by the High Court that the order like the one passed by the learned Sessions Judge (revisional court) is not covered by Section 145 CrPC. The said decision does not lay down any proposition of law on the controversy involved in the present case.

27. There is thus, no illegality or material irregularity in the order of the SDM. The impugned order passed by the learned revisional court does not suffer from any infirmity as to call for interference. Consequently, the present petition deserves to be dismissed. Ordered accordingly.

28. The petition and all the pending applications are disposed of.

VIKAS MAHAJAN, J

SEPTEMBER 11, 2023
N.S. ASWAL