



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.18308 of 2016
Date of Decision: 09.09.2024
Reserved on: 25.07.2024

Alam Singh ... Petitioner

Versus

Baljit Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ranjit Saini, Advocate,
for the petitioner.

Mr. Rajinder Singh Basra, Advocate,
for the respondents No.1 to 3 and 6.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of order dated 15.10.2015 (Annexure P-3) passed by the Sub Divisional Magistrate, Baba Bakala Sahib whereby proceedings initiated under Section 145 of Cr.P.C. were dropped as well as the order dated 05.04.2016 (Annexure P-7) passed by the Additional Sessions Judge, Amritsar whereby the revision petition filed against the order dated 15.10.2015 had been dismissed.
2. The facts relevant for the purpose of disposal of this petition, as briefly stated, are that the Tara Singh and Gehal Singh were co-owners

2024:PHHC:118883



of land measuring 158 Kanals 07 Marlas out of total land measuring 250 Kanals 11 Marlas existing within the revenue estate of Village Kot Khehra. The share of Tara Singh was 79 Kanals 03 Marlas and the share of Gehal Singh was 79 Kanals 04 Marlas. At the time of making entries of murababandi in the registers of the revenue authorities, instead of 158 Kanals 07 Marlas of land, the land owned by the above named Tara Singh and Gehal Singh was recorded to be measuring 115 Kanals 03 Marlas. Tara Singh sold land measuring 79 Kanals 03 Marlas during his life time. However, since his name was shown in the ownership of the revenue record, therefore taking benefit of the said mistake, the legal heirs of Tara Singh namely, Balwinder Singh and Joginder Kaur sold 25 Kanals 12 Marlas of land to the present petitioner. Mutation of this land had also been sanctioned in the name of the present petitioner. Since the respondent No.1 had taken possession of the land so purchased by the petitioner and was not giving up the same and as there was apprehension of a quarrel taking place between both the parties, therefore, on the complaint of the petitioner, SHO PS Tarsika prepared a Calendra under Section 145 of Cr.P.C. and sent the same to the Sub Divisional Magistrate, Bala Bakala Sahib for initiating further action.

3. As revealed from the record, on filing of Calendra, the Sub Divisional Magistrate gave direction to both the parties to appear before him on 18.06.2015. The petitioner and respondent No.1 had filed written submissions. After considering the contentions raised by both the sides, the Sub Divisional Magistrate vide order dated 15.10.2015 closed the proceedings initiated under Section 145 of Cr.P.C. by observing that the

2024:PHHC:118883



dispute with regard to the land in question was pending before the Civil Court and the parties were directed to maintain status quo and as such no action could be taken under Section 145 of Cr.P.C.

4. Feeling dissatisfied, the petitioner preferred a revision petition before the Additional Sessions Judge, Amritsar which too was dismissed vide order dated 05.04.2016 (Annexure P-7).

5. It was argued by learned counsel for the petitioner that the order passed by the Sub Divisional Magistrate was not sustainable in the eyes of law as at the time of passing the said order dated 15.10.2015, he had already received orders of his transfer from Baba Bakala Sahib Sub Division. He had even relinquished the charge of the said post on 20.10.2015. He acted in a hasty manner. The Sub Divisional Magistrate as well as the revisional Court did not apply their judicious mind. Non speaking orders had been passed. The proceedings under Section 145 of Cr.P.C. were ordered to be dropped only by observing that there was an order of status quo which could not be made a ground for that purpose. As such, it was argued that the impugned orders are liable to be set aside, the petition deserves to be accepted and the proceedings under Section 145 of Cr.P.C. deserve to be restored.

6. On the other hand, it was argued by learned counsel for the respondents No.1 to 3 and 6 that admittedly and undisputedly, they were in possession of the land in dispute. Civil litigation with regard to the abovesaid land was pending at the time of initiating proceedings under Section 145 of Cr.P.C. and order for maintaining status quo had been passed. During the existence of the abovesaid order, the petitioner was not entitled to invoke the jurisdiction of the Magistrate under Section 145 of Cr.P.C. The

2024:PHHC:118883



Sub Divisional Magistrate had rightly closed the proceedings. Merely because the order for transfer had been received, it did not mean that he was precluded from passing any order while acting in performance of his duties. While stressing that there was no illegality and infirmity in the orders passed by the Sub Divisional Magistrate and the Lower Appellate Court, it was urged that the petition being devoid of any merit was liable to be dismissed.

7. Learned counsel for both the parties were heard at considerable length.

8. At the outset, it would be apposite to refer to the provisions of Section 145 of Cr.P.C. which are relevant for the purpose and read 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

2024:PHHC:118883



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 of 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 this 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 sub-section (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

2024:PHHC:118883



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.”

9. Then as per Section 146 of the Code, after satisfying himself that there is likelihood of causing a breach of peace and issuing notice to the parties in this regard, the Magistrate at any time after passing the order under Section 145 (1) of the Code, may pass order for attaching the subject of dispute if he is unable to satisfy himself as to which of the parties was in possession of the said subject of dispute at that point of time. As per proviso

2024:PHHC:118883



to this Section, such attachment can be withdrawn if there is no longer likelihood of breach of peace with regard to the subject of the dispute.

10. In the instant case, the petitioner in his complaint which formed the basis of preparation of calendra by the SHO concerned, claimed to be owner of the property in dispute. It was, however, not disputed by him that possession of the said property was with the respondents No.1 to 6 though he asserted that the same was illegal. Once, the petitioner himself admitted the respondents to be in possession over the same, in the considered opinion of this Court, the proceedings as pending before the Sub Divisional Magistrate were liable to be closed as such proceedings could only be initiated when there was doubt regarding the fact as to which party was in possession or if there was dispute regarding possession. That apart, admittedly civil suit was already pending between the parties and order dated 18.02.2015 had been passed by the Civil Court thereby directing them to maintain status quo with regard to possession. During the pendency of that suit, the proceedings under Section 145 Cr.P.C. did not lie. In this context, this Court draws reliance upon **Ram Sumer Puri Mahant v. State of U.P.**, AIR 1985 Supreme Court 472, wherein it was observed that when the question of possession is being examined by the Civil Court and the 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, then the Magistrate is not competent/empowered to take cognizance under Section 145 of the Code. Reliance can further be placed upon **Mohd. Abid and others v. Ravi Naresh and others**, 2023 (1) CriCC 389, wherein, the petitioners before

2024:PHHC:118883



initiation of proceedings under Section 145 of Cr.P.C. had already filed a suit for injunction in which ex parte ad interim injunction had been granted by the Civil Court. It was observed that once the Civil Court was seized of the matter, it went without saying that the proceedings under Section 145 Cr.P.C. could not proceed and must come to an end. While observing that the inter se rights of the parties regarding title or possession were eventually to be determined by the Civil Court, the proceedings were closed. Then in a similar case as the present one, a Coordinate Bench of this Court by a recent order dated 14.08.2024 passed in CRM-M-43103 of 2022 titled as **Surender Kumar v. State of Haryana and others**, has observed that when there is no dispute with regard to the question of possession over the land in dispute and civil proceedings are pending, the proceedings under Section 145 of Cr.P.C. can not be initiated.

11. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it is observed that since it is not in dispute that a Civil Suit No.419 of 14.11.2014 titled as **Baljit Singh and others v. Alam Singh** in the shape of relief of permanent injunction filed by the respondents was already pending in the Civil Court at Baba Bakala Sahib whereby the parties were directed to maintain status quo vide order dated 18.02.2015 and at the time when the calendra was prepared an ad interim injunction was also granted with regard to possession over the disputed property in the said suit, therefore, it was certainly not open to the Magistrate to initiate and continue with the proceedings under Section 145 of Cr.P.C. The Sub Divisional Magistrate by taking into consideration these facts had rightly closed the proceedings. So far as the contention that he

2024:PHHC:118883



passed the impugned order when he was under transfer is concerned, there in no force in the same as it is apparent from the record that the Sub Divisional Magistrate, Baba Bakala Sahib relinquished the charge from his post on 20.10.2015 only and till that date, he was very much competent to pass any order in performance of his duties. Accordingly, the order passed by him and the order passed by learned revisional Court upholding the order of the Sub Divisional Magistrate cannot be stated to be suffering from any material irregularity much less illegality warranting exercise of powers by this Court. As such, finding no merit in the petition, the same stands dismissed.

09.09.2024
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No