

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-23660 of 2018 (O&M)

Reserved on: 27.02.2024

Pronounced on: 06.03.2024

Davinder Kaur and others

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajbir Singh, Advocate for the petitioners.

Mr. Amandeep Singh, DAG, Punjab.

Mr. Mohd. Yousaf, Advocate for respondents
No.5 and 6.

DEEPAK GUPTA, J.

By way of present petition filed under Section 482 Cr.P.C., petitioners pray to quash the impugned order dated 08.05.2018 (Annexure P1) passed by respondent No.3 – Sub Divisional Magistrate, Dhuri, District Sangrur; and the Kalendra under Section 145 Cr.P.C. bearing DDR No.45 dated 04.07.2017, File No.3 dated 21.08.2017 (Annexure P2) filed by respondent No.4 – SHO, PS Sadar Dhuri, to initiate the proceedings under Section 145 Cr.P.C.

2. On perusal of paper book, it emerges that petitioners No.1 to 3 and private respondents No.5 and 6 are closely related. One Sarup Singh had three sons, namely, Harnek Singh, Gurcharan Singh and Jeet Singh. Petitioners No.1 to 3 are the widow and sons of Harnek Singh; whereas respondents No.5 and 6 - Gurcharan Singh and Jeet Singh, are the other sons of Sarup Singh. It emerges further that Sarup Singh executed four sale deeds way back on 05.12.2003 in favour of the petitioners regarding the land

in dispute. Said sale deeds were challenged by Gurcharan Singh and Jeet

Singh i.e. respondents No.5 and 6 of this case along with their sons, by filing a civil suit claiming that the land in dispute was the ancestral co-parcenary property and could not have been sold without legal necessity etc. The said suit was dismissed by learned Civil Judge (Junior Division), Dhuri vide judgment and decree dated 04.04.2007 (Annexure P3). Aggrieved by the same, Gurcharan Singh etc., i.e. respondents No.5 and 6 along with their sons filed an appeal before the District Judge, Sangrur. The appeal was partly allowed by holding the property in dispute to be Hindu Joint Family/ancestral property and that Sarup Singh could not have sold the land to the extent of more than his own share calculated on the basis of notional partition. As such, vide judgment and decree dated 12.08.2008 (Annexure P4), the petitioners of this case were restrained from alienating the land to the extent of share of the plaintiffs of the suit i.e. respondents No.5 and 6.

3. Against the afore-said judgment and decree passed by District Judge, Sangrur, petitioners approached this Court by filing RSA No.3791 of 2008 (O&M), in which execution of the impugned judgment and decree passed by the First Appellate Court was directed to be stayed vide order dated 25.11.2008 (Annexure P5). Vide another order dated 22.07.2010 (Annexure P6), the RSA was admitted. On a miscellaneous application bearing Crl. Misc. No.11027-C of 2010 in RSA No.3791 of 2008, the following order was passed by this Court on 03.02.2011 (Annexure P8):-

“Heard.

Learned counsel for the non-applicants- appellants has submitted that the appellants will not alienate the suit property without prior permission of this Court. In view of the said statement, learned counsel for the applicants submits that he does not press the application.

Ordered accordingly.”

4. It further emerges that SHO Police Station, Sadar Dhuri had

filed a Kalendra in the Court of Sub Divisional Magistrate, Dhuri, on the basis of DDR No.22 dated 23.07.2014 under Section 145 Cr.P.C against the two parties on 01.08.2014. However, the proceedings in that Kalendra were dropped by the Sub Divisional Magistrate, Dhuri vide his order dated 31.03.2016 (Annexure P.10) after observing that civil litigation regarding the property in dispute was already pending before the High Court.

5. Later on, SHO Police Station, Sadar Dhuri filed impugned Kalendra (copy Annexure P2) on the basis of DDR No.45 dated 04.07.2017 under Section 145 Cr.P.C recorded at Police Station Sadar Dhuri against both the parties. Respondents No.5 and 6 of this petition were impleaded as party No.1; whereas petitioners of the present petition were impleaded as party No.2. After giving background facts of the civil litigation between the parties, it was stated that both the parties had lodged various complaints against each other; that there remained continuous disputes between the parties with regard to possession of the land and so, preventive action was required to be taken.

6. Sub Divisional Magistrate, Dhuri vide impugned order dated 08.05.2018 (Annexure P1) allowed the Kalendra. The land in dispute measuring 20 Bigha 14 Biswa situated in revenue estate of village Jahangir was ordered to be taken into government possession under Section 146 Cr.P.C till the decision of RSA No.3791 of 2008 as pending before this High Court. Naib Tehsildar, Dhuri was appointed as Official Receiver of the land with direction to take the land in his possession immediately and to make necessary arrangements as per Rules. It was further directed that the land will be given to the party, in whose favour afore-said RSA is decided by the High Court.

7. Petitioners, aggrieved by the afore-said order, have approached

this Court. The main contention raised by learned counsel for the petitioners is that the petitioners are in possession of the land in dispute since the time of purchase; that the Civil Court did not hold the possession of private respondents No.5 and 6; that the execution of the judgment and decree of the First Appellate Court has been stayed by the High Court and so, in view of the pendency of the dispute before this High Court, proceedings under Section 145 and 146 Cr.P.C could not have been initiated. Petitioners have also given background facts regarding the civil and the criminal litigation between the parties.

8. Learned counsel for the petitioners has relied upon judgments of Hon'ble Supreme Court in *Kunjbihari Vs. Balram and another, 2007(1) SCC (Cri) 376*; *Amresh Tiwari Vs. Lalita Prasad Dubey and another, 2000(2) R.C.R. (Criminal) 614*; *Ram Sumer Puri Mahant Vs. State of U.P and others, 1985(1) R.C.R. (Criminal) 278* and also judgments of this Court in *Ramesh Vs. State of Haryana and others, 2018(1) R.C.R. (Criminal) 376*; *Bawa Singh and others Vs. State of Punjab and others, 2012(3) R.C.R. (Criminal) 348*; *Shri Raghubir Dass Mahant Chela Madan Mohan Dass Vs. Sub Divisional Magistrate, Jagadhri and others, 2003(1) R.C.R. (Criminal) 829*; *Hartej Singh Vs. Amarjit Singh, 1998(2) R.C.R. (Criminal) 755* and *Malkiat Singh Vs. State of Punjab and another, 1997(2) R.C.R. (Criminal) 303*, to support his contentions.

9. On the other hand, on the basis of the reply to the petition filed by way of affidavit of Sub Divisional Magistrate Dhuri, it is contended by learned State Counsel that there are specific findings in the impugned order that the parties have continuous disputes between them for the last many years over possession of the disputed land; that both the parties are claiming their right but no such fact has been brought on record, from which

possession of either of the party could be proved; that dispute and physical fights have ensued between the parties many times over the possession of the land, as a result of which, FIRs under different provisions of IPC have been registered against the parties from time to time, which are duly referred in the impugned order and so, keeping in view these circumstances, it was deemed appropriate to take the land in question under the government possession by taking preventive action under Section 146 Cr.P.C to avoid any untoward incident with a view to maintain law and order and so, the impugned order is absolutely in accordance with law. Learned State Counsel for respondents No.1 to 4 pray for dismissal of the petition.

10. In the separate reply filed by respondents No.5 and 6, they submitted that the petitioners have not approached the Court with clean hands, inasmuch as they are not in possession over any portion of the land in dispute, as the actual possession of the land was taken by the Official Receiver-cum-Naib Tehsildar, Dhuri on 21.05.2018 as per Rapat No.339 dated 21.05.2018, copies of which are Annexure R5/3 and Annexure R5/3A. As the petitioners are not in actual physical possession, so, the question of cultivating the land does not arise. They defended the impugned order as passed by respondent No.3 and prayed for dismissal of the petition.

11. Learned State Counsel as well as counsel for respondents No.5 and 6 have relied upon a judgment of this Court in ***Mahant Kesar Dass Vs. Gurdev Singh alias Gurdev Dass and others, 1996(1) R.C.R. (Criminal) 697***, in order to contend that in the facts and circumstances of the case, the impugned order has been rightly passed, as the power of the Executive Magistrate under Sections 145 and 146 Cr.P.C. is only for the purpose of prevention of any threat, which is found to be imminent regarding breach of peace.

12. By way of application bearing **CRM No.26392 of 2018** filed under Section 482 Cr.P.C., petitioners prayed for staying the operation of the impugned order dated 08.05.2018 (Annexure P1) and to direct respondent No.3 not to interfere in the peaceful possession of the petitioners.

13. Needless to say that said application has been opposed by respondents No.5 and 6 on the same ground that actual physical possession has already been taken over by the Official Receiver on 21.05.2018.

14. I have considered submissions of both the sides and have perused the record carefully.

15. At the outset, it is noticed that in the civil litigation between the parties, as now pending before this High Court, the issue pertaining to possession was not in dispute. The relief sought by the plaintiffs of the civil suit (*i.e. respondents No.5 and 6 herein and their sons*) was to declare the sale deeds dated 05.12.2003 executed by Shri Sarup Singh in favour of petitioners of this case, to be collusive and illegal. Consequential relief of injunction was sought to restrain the said petitioners from alienating, mortgaging or disposing off the property in dispute or to create any sort of encumbrance over any part of the land in dispute. As noticed earlier, the trial Court dismissed the suit but the First Appellate Court after finding the property in question to be Hindu Joint Family/Ancestral Property, held the impugned sale deeds to be null and void except to the extent of share of Shri Sarup Singh on the basis of notional partition and restrained the petitioners of this case from alienating the land in question to the extent of share of the plaintiffs of the case *i.e. respondents No.5 and 6*. It is this relief as granted by the First Appellate Court, the execution of which was stayed by this High Court vide order dated 25.11.2008 (Annexure P5). Despite repetition, it is made clear that there was no finding regarding possession of any of the party

over the land in dispute.

16. In the background of above-said facts, the impugned order is required to be analysed. After the impugned Kalendra was filed, the Sub Divisional Magistrate, Dhuri issued notice under Section 145(1) Cr.P.C to both the parties. Both of the parties filed their respective claims. After considering the same, Sub Divisional Magistrate, Dhuri made the following observations in the impugned order:-

“File perused on the basis of claim produced by the parties and contentions of counsels for the parties. The parties have continuous dispute between them for the last many years over possession of land in question and both the parties are claiming their right but any such fact is not placed on file from which the possession of either party can be proved valid. Dispute and physical fight have ensued between the parties many times over possession of land. As a result, FIRs under different sections of IPC have been registered against the parties and preventive action has been taken by Police many times. This dispute is so serious that even FIR u/s 307 IPC is also registered against the parties. In view of seriousness of this dispute police had filed Kalendra earlier in 2014 for taking preventive action under Section 145 CrPC but as RSA was pending in Hon'ble Punjab and Haryana High Court the proceedings of 145 Cr.P.C were dropped on dated 31.03.2016. Even after that the parties are at dispute with each other. Due to this dispute Report No.27 dated 17.06.2016, FIR No.142 Dated 11.07.2016 U/s 379/427 IPC, FIR No.54 Dated 16.04.2017 U/s 458/379/447/511/506/424/34 /201 IPC have been registered, from which it is evident that the parties have continuous dispute between them with regard to possession of land and despite registration of so many cases and preventive action taken again and again, the parties do not stop fighting. Any big incident/ bloodshed can take place between the parties any time and it is necessary to take land in question under Government possession by taking preventive action under Section 145 CrPC so as to avoid any untoward incident. As far as pending RSA in Hon'ble Punjab and Haryana High Court is concerned, as per authorities of different courts produced by counsel for party No.1 preventive action under Section 145 Cr.P.C is taken only to maintain law and order, which does not influence the proceedings of civil court. Proceeding of civil court is a separate proceeding and

preventive action taken by Magistrate under Section 145 Cr.P.C is a separate proceeding. As far as stay order issued in RSA No.3791 of 2008 pending in Hon'ble Punjab and Haryana High Court is concerned, in that order judgment and decree issued by District and Session Judge Sangrur has been stayed. In this order there is no stay on taking preventive action under Section 145 CrPC. As far as the question of proceedings of 145 CrPC dropped earlier is concerned, this was the decision taken by the then Magistrate in view of facts and circumstances of that time. As per law, Res-judicata is now applicable in criminal cases. In view of today's facts and circumstances when so many disputes have taken place between the parties, it is necessary to take preventive action under Section 145 Cr.P.C.

In view of above facts and circumstances it is necessary to take preventive action under Section 145/146 CrPC on land in question. Hence, land in question Khewat No.325/308 Khatouni No.430 Khasra No.1851/1446, 1853/1447, 1855/1448, 1449, 1450 measuring 20-14 situated in revenue estate of Jahangir is hereby ordered to be taken into Government possession under Section 145 CrPC till the decision of RSA No.3791 of 2008 filed in Hon'ble Punjab and Haryana High Court. In view of production (output) of land in question, Naib- Tehsildar Dhuri is appointed as Official Receiver of this land and he is hereby directed to take the land in question into his possession immediately and to make necessary arrangement as per rules. This is also hereby ordered that this land be given to the party in whose favour RSA filed in Hon'ble High Court is decided by the Hon'ble Court. File be consigned to record room as per procedure.”

17. It is clear from the above-said order passed by the Sub Divisional Magistrate, Dhuri, which has also been reiterated in the affidavit filed by respondent No.3 before this Court that there was continuous dispute between the parties for the last many years over possession of the disputed land, as both of the parties were claiming their right but no such fact was brought to the notice of the Court, from which possession of either of party could be proved valid. Disputes and Physical fights had taken place between the parties many times over possession of land, as a result of which, FIRs against each other had been registered from time to time and preventive action had to be taken many times.

18. In the afore-said facts and circumstances, the impugned order as passed by the SDM, Dhuri cannot be stated to be unjustified. This Court in ***Mahant Kesar Dass's case (supra)***, discussed the scope of Sections 145 and 146 Cr.P.C and held in Para N: 10 & 11 as under:-

“10. Sections 145 and 146 of the Code frame a scheme in itself. The object of Section 145 is to prevent a breach of peace or maintenance of law and order, till the rights of the parties are determined by a court of competent jurisdiction. The Magistrate while exercising powers under Section 145 of the Code has a very restricted jurisdiction. The language used by the legislation while enacting Section 145 of the Code indicates the limited scope of authority and determination, both to be exercised by such a Magistrate. The Magistrate without reference to the merits of the case and if it is possible for him to determine, then alone would determine the lawful possession of a party in consonance with the provisions of the Code. This language of Section 145(4) of the Code primarily restricts and limits the jurisdiction to be exercised by the Magistrate. While exercising powers under this Section, the Magistrate cannot give finality to the rights of the party and grants merely a temporary relief with the principal object of preventing breach of the peace and to maintain law and order in the area under the jurisdiction of that Magistrate. Once on the basis of a Calendara the Magistrate is satisfied that on the date of the complaint or Calendara there was an imminent threat of breach of the peace and in the event of his coming to the conclusion that no definite finding can be given in favour of a party, the provisions of Section 146 of the Code come into play. In the event of an indefinite answer by the Magistrate, the need for attaching a property and/or appointing a Receiver becomes necessary. Thus, the provisions of Sections 145 and 146 are complimentary to each other and are not limited by each other. Section 146 of the Code comes to aid where after passing a final order under Section 145 of the Code no definite finding can be given in favour of a party or there are such other compelling circumstances which necessitate the appointment of a Receiver or attachment of the property. Wherever a Magistrate finds the threat to be imminent, it is not obligatory upon the Magistrate to wait for determination of rights of the parties in regard to the disputed property by a Civil Court but can pass appropriate orders though such orders would obviously be subject to the determination of rights by a court of competent jurisdiction: refer Mathura Lal v. Bhanwar Lal and another, AIR 1980 Supreme Court 242. The Supreme Court while

enunciating the above principle also observed that Sections 145 and 146 of the Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace because of a dispute concerning any land etc. Section 146 of the Code cannot be separated from Section 145. It must be read in context of Section 145. Contextual construction must surely prevail over isolationist construction. Thus, these two Sections aid each other to achieve the object of the provisions of the Code, and the submission of the learned counsel that Section 146 is only a provision applicable during the pendency of a petition under Section 145 of the Code is not tenable. The conclusion of proceedings under Section 145 is a kind of a condition precedent to the passing of an order under Section 146, and an order under Sections 145/146 can certainly be passed by the Magistrate directing the parties to maintain a particular situation till their rights are determined by the Court of competent civil jurisdiction.”

11. The learned counsel for the petitioner has also relied upon *Swiam Sunder and others v. The State of Rajasthan and others*, 1986(1) All India Criminal LR 311, and *Sharafat Ali Khan and another v. Abdul Latif and others*, 1987(1) All India Criminal LR 81, while the counsel for the respondent has relied upon *Karnail Singh v. The State of Punjab*, 1995(1) Recent CR 659. The basic principle in this regard has been settled by the Supreme Court in the case of *Thunamal alias Devandas v. The State of Madhya Pradesh and others*, AIR 1988 Supreme Court 1973, by stating that the findings of a civil court are binding upon a court exercising criminal jurisdiction. Where civil suits are pending normally the court of the Magistrate should not permit continuation of the proceedings under Sections 145 and 146 of the Code and pass orders which may be in conflict with the orders passed ultimately by the civil court, but in a given situation and keeping in view the imminent threat to the breach of the peace or an emergency the Magistrate would be well within his jurisdiction to permit continuation of proceedings and pass the order with a limited purpose of meeting the exigencies of the situation and till rights are determined by a civil court of competent jurisdiction or any orders are passed by such civil court. All the authorities afore stated fully fortify this consistent view taken by all courts. In the present case nothing else has been done by the learned Sessions Judge except that he has permitted the property to be protected through Joint Receivers of responsibility and status, that too till the time appropriate orders are passed by the civil courts where the matters are substantially in issue in the present proceedings are pending for determination. Admittedly, the suits have been pending for a considerable period, and none of the parties to these

proceedings has obtained any injunction order which could be stated to be in conflict with the orders passed by learned Sessions Judge.”

19. Thus, where the civil suits are pending, normally the Court of Magistrate should not permit continuation of the proceedings under Sections 145 and 146 Cr.P.C or pass any such order, which may be in conflict with the orders passed by the Civil Court but in a given situation and after considering the imminent threat to the breach of peace or an emergency, the Magistrate will be well within his powers and jurisdiction to permit the continuation of proceedings and pass the order with a limited purpose of meeting the exigencies of the situation and till the rights are determined by a Civil Court of competent jurisdiction or any orders are passed by the Civil Court.

20. In the light of the afore-said legal position and applying the same to factual matrix of this case, when continuous disputes regarding possession over the land in dispute were taking place; even the criminal cases had been registered against each other by the rival parties many times and preventive action had also earlier been taken, the impugned order is quite justified so as to prevent the imminent breach of peace, till the matter is finally decided by this Court on the civil side.

21. As far as the authorities cited by learned counsel for the petitioners are concerned, they are on a different factual situation. In *Kunjbihari's case (supra)*, the right of the parties in respect of disputed property had been settled by the compromise decree passed by the Civil Court and it was in these circumstances that proceedings under Section 145 Cr.P.C were held by Hon'ble Supreme Court to be an abuse of the process of the Court.

22. In *Amresh Tiwari's case (supra)*, there was dispute over possession of the property. Civil suit was also filed. Hon'ble Supreme Court

held that there is no broad proposition of law that in every case where the civil suit is filed, proceedings under Sections 145 Cr.P.C., would never lie. Hon'ble Supreme Court clarified that it is only in cases, where civil suit is for possession or for declaration of title in respect of the same property and where the reliefs regarding protection of property concerned can be applied for and granted by the Civil Court that proceedings under Section 145 Cr.P.C should not be allowed to continue 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.

23. Instead of supporting the case of the petitioners, the above said authority rather supports the case of the respondents. As noticed earlier that this Court vide order dated 25.11.2008 (Annexure P5) had stayed the execution of the order of the Appellate Authority, which was only regarding the alienation of the property in dispute to the extent of share of the plaintiffs. No finding had been given by the Appellate Court regarding possession over the land in dispute. Hon'ble Supreme Court has clarified in ***Amresh Tiwari's case (supra)*** that there is no broad proposition of law that in every case where civil suit is filed, proceedings under Section 145 Cr.P.C would never lie.

24. In ***Ram Sumer Puri Mahant's case (supra)***, civil suit for title, possession and injunction was pending and it was for this reason that Hon'ble Supreme Court held that proceedings under Sections 145 Cr.P.C., could not be started while civil suit was pending. Position in this case is different.

23. In view of the entire discussion as above, this Court finds no reason to interfere in the well-reasoned order passed by respondent No.3 –

Sub Divisional Magistrate, Dhuri, having regard to the facts and

circumstances of this case. As such, finding no merit in the present petition,
the same is dismissed.

March 06, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No