

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

SR. No.115+233

CRM-39756-M-2003 (O&M)

Date of decision:31.01.2024

Ashwani Kumari**...Petitioner****Versus****Darshan Lal and others****...Respondent(s)****CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. G.S. Bhatia, Advocate for the petitioner.
Mr. P.S. Paul, Additional P.P. UT Chandigarh.
Mr. Navjot Singh, Advocate for
respondents No.3 and
LRs of respondent No.2-Legal Aid Counsel.

N.S. SHEKHAWAT, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 09.08.2023 (Annexure P-25) passed by the Court of Additional Sessions Judge, Chandigarh and the order dated 01.05.2001 (Annexure P-23) passed by the Court of Sub-Divisional Magistrate (East), Chandigarh, whereby, it was ordered that seal of Site No.507, Industrial Area, Phase-II, Chandigarh be opened and the possession be restored to the first party, namely, Lakshmi Devi and Darshan Lal and a second party was directed not to interfere with the possession of the site, which would be with the first party until evicted thereupon in due course of law.

2. This Court is primarily concerned about the initiation of the proceedings under Section 145/146 Cr.P.C. by the court of Sub Divisional

Magistrate, Chandigarh and the validity of the impugned orders dated 01.05.2001 (Annexure P-23) passed by SDM (East), Chandigarh and the order dated 09.08.2003 (Annexure P-25) passed by the Court of Additional Sessions Judge, Chandigarh. Even the submissions have been made by learned counsel for the parties to assist the Court with regard to the disposal of the said limited issues involved in the present matter.

3. The present case has a very long and chequered history and the parties have filed different litigations against each other. Learned counsel for the petitioner submits that Joginder Pal, respondent No.2, was the owner in possession of an industrial shed constructed on Plot No.507, Industrial Area-II, Chandigarh. On 02.09.1994, the petitioner had taken the building in question from respondent No.2 at a monthly rent of Rs.4500/- through Santosh Kumari, who was GPA holder of respondent No.2. After taking the building on rent, the petitioner had set up his office in the building. In October, 1994, respondents No.2 and 3 came to the petitioner and expressed their desire to sell the property to the present petitioner. On 02.11.1994, respondent No.2 executed an agreement to sell of the shed in question through his attorney Santosh Kumari, in favour of the petitioner and at the time of execution of the said agreement, received the full consideration amount through bank drafts etc. Respondent No.2 also executed the necessary documents including the affidavit, indemnity bond etc. in respect of the entire consideration amount and the possession was delivered to the petitioner. However, after about a week of the agreement, 2-3 ladies and some men came and disclosed that they were relatives of respondent No.2 and threatened the petitioner to dispossess from the property. The petitioner informed them that he had purchased the property in question. Again on

15.11.1994, respondent No.1 along with certain more persons came there and sat near the main entrance. The matter was reported by the petitioner to Senior Superintendent of Police and SHO concerned immediately.

4. On 16.11.1994, the petitioner filed a suit for permanent injunction, restraining the respondents from interfering in the peaceful possession of the petitioner over the property in question. An application under Order 39 Rule 1 and 2 CPC, which was filed by the petitioner, was also taken up and the Sub Judge, 1st Class, Chandigarh, restrained the respondents from interfering in the peaceful possession of the petitioner over the property in question. The said order was later on modified on 09.12.1994 and the parties were ordered to maintain status-quo with regard to the suit property till the decision of the suit. Feeling aggrieved of the order passed by Sub Judge, respondent No.1, Jagdish Lal and Pushpa Rani filed an appeal before the District Judge, Chandigarh and vide judgment dated 16.01.1996, the District Judge, Chandigarh dismissed the appeal filed by respondent No.1 and others.

5. In the meantime, on 04.08.1994 respondent No.1 filed an application under Section 145 Cr.P.C. (Annexure P-6) against respondents No.2 and 3 and it was prayed that the proceedings under Section 145 Cr.P.C. may be initiated in respect of the building and an order may be passed declaring respondent No.1 to be entitled to possession and its restoration in respect of subject in dispute i.e. building.

6. Learned counsel for the petitioner submitted that from the application (Annexure P-6), it was clear that the possession had already been taken by respondents No.2 and 3 from respondent No.1. After filing of the application (Annexure P-6), notice was issued to respondents No.2 & 3 and

the SDM was apprised of the fact that parties were already before the civil court and the civil court had already issued an injunction, restraining respondent No.1/applicant not to interfere in the peaceful possession of respondents No.2 and 3. A detailed reply was also filed by respondent No.2 and prayed for dismissal of the proceedings under Section 145 Cr.P.C. In the meantime, the petitioner also moved an application before SDM to implead him as a party as the petitioner had purchased the property and was also in possession of the same. Vide order dated 18.07.1995, the application filed by the petitioner was ordered to be dismissed. The petitioner approached this Court by filing a miscellaneous petition, however the petitioner was relegated to avail his remedy of criminal revision before the Sessions Court. Again the petitioner filed a revision petition before the Sessions Court. However, vide order dated 25.10.1996, the Sessions Judge, Chandigarh also dismissed the revision filed by the petitioner by observing that SDM had already passed an order under Section 146 Cr.P.C. and the SDM specifically observed that the party should get the question of possession decided by the Civil Court and the Civil Court was already seized of the matter. It requires mention that during the pendency of revision petition, the SDM had also passed the order dated 07.02.1995 (Annexure P-20) under Section 146 Cr.P.C. by holding that he was unable to satisfy himself as to which party was in possession, whereas there was ample evidence to show that the petitioner was continuing in possession of the property after purchasing the same in the year 1994. After passing the order (Annexure P-20), the SDM directed the SHO Police Station, Sector 31, Chandigarh to attach the said building and the SHO had put locks on the locks put by the present petitioner. This fact alone proves that the petitioner was in possession of the

property in question and only on papers, the possession had been obtained from the petitioner.

7. Learned counsel further submitted that even though the matter was pending before the civil court, yet the SDM passed the impugned order dated 01.05.2001 (Annexure P-23) and directed the receiver to open the seal and to hand over the possession to respondent No.1. When the matter was pending before the civil court and an interim injunction had already been granted, the SDM was not competent to deal with the matter any further. In the meantime, respondents No.2 & 3 filed a revision before the Additional Sessions Judge, Chandigarh against the order dated 01.05.2001 passed by the SDM and the revision filed by respondents No.2 and 3 was ordered to be dismissed vide impugned judgment dated 09.08.2003 (Annexure P-25) passed by the court of Additional Sessions Judge, Chandigarh.

8. Learned counsel for the petitioner vehemently argued that the averments made by respondent No.1 in the application under Section 145 Cr.P.C. clearly demonstrated that the petitioner was in possession and it was also mentioned in the application that the matter was *sub judice* before the civil court. Consequently, it was not permissible to initiate the parallel proceedings under Section 145 Cr.P.C., especially when an interim injunction order had already been passed by the civil court. Even otherwise, it had also led to the multiplicity of the litigation, which could be avoided.

9. Learned counsel further submitted that the civil court had already passed various interim orders, before the initiation of the proceedings under Section 145 Cr.P.C. and by passing the various orders and the SDM was not competent to pass orders under Sections 145/146 Cr.P.C.,

which adversely effected the rights of the parties, which were litigating before the civil court.

10. Learned counsel for the petitioner next argued that the civil suit for permanent injunction filed by the petitioner on 16.11.1994 had been decided by the civil court on 04.05.2006 vide judgment and decree (Annexure P-26). Against the judgment and decree (Annexure P-26) passed by the civil court, the petitioner had already filed a civil appeal before the District Judge, Chandigarh. Another appeal was also filed by Darshan Lal and others and both the appeals were decided vide judgment dated 29.05.2010. The appeal filed by the petitioner was partly allowed and as a result of which, the suit of the petitioner was partly decreed and the defendants were restrained from forcibly dispossessing the petitioner/plaintiff or causing any type of interference in any manner except of one room adjacent to the gallery, in which Darshal Lal was held to be in possession. Even RSA No.38019 of 2010 was filed by Darshan Lal before this Court. Apart from that, the petitioner has also filed a Civil Appeal No.288 of 2014, which was decided vide judgment dated 21.02.2018.

11. On the other hand, learned counsel appearing on behalf of the respondent submitted that there was no illegality in the impugned orders passed by the Court of SDM as well as Additional Sessions Judge, Chandigarh. Since a dispute was pending regarding the possession of the property in question and the parties could breach the peace at any moment, the SDM was left with no other option but to pass an order under Section 145 Cr.P.C.

12. I have heard the parties at length and perused the case file carefully.

13. The only question which needs adjudication before this Court is with regard to the initiation and maintainability of the proceedings under Section 145 Cr.P.C. before the Court of SDM, Chandigarh, when the civil court was already seized of the matter and certain interim orders had already been passed by the civil court. The powers have been conferred on the Executive Magistrates to adjudicate upon the question as to which party was in possession or if any party had been dispossessed immediately before the date of initiation of the proceedings, then restore the possession of the party so dispossessed by the use of force. It has been held by the Hon'ble Supreme Court in a number of judgments that the proceedings under Section 145 Cr.P.C. are subservient to the adjudication by the civil court and in case a civil suit is pending, the Executive Magistrate should normally not initiate the proceedings under Section 145/146 Cr.P.C. and *the inter se* rights of the parties regarding title or possession should eventually be left to be determined by the civil court. It has been held by the Hon'ble Supreme Court in the matter of **Amresh Tiwari versus Lalta Parsad Dubey and another 2000(4) SCC 440** as follows

*“The question then is whether there is any infirmity in the Order of the S.D.M. discontinuing the proceedings under Section 145 of the Criminal Procedure Code. The law on this subject-matter has been settled by the decision of this Court in the case of **Ram Sumer Puri Mahant Vs State of U.P.** In this case it has been held as follows:*

"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 a 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 as 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.”

14. Still further, this Court has no hesitation to hold that in the facts and circumstances of the present case, the SDM had not properly appreciated the scope of the proceedings under Section 145 & 146 Cr.P.C. The object of initiation of the proceedings under Section 145 Cr.P.C. is merely to maintain law and order and to prevent the breach of peace by maintaining one or the other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 Cr.P.C. is in respect of actual possession without reference to the merits of the claim of any of the parties to a right to possess the subject of dispute. The controversy in the present case is squarely covered by the ratio of law laid down by the Hon'ble Supreme Court in the matter of **Ashok Kumar versus State of Uttrakhand 2013(3) SCC Criminal 177**, wherein it has been held as under:-

12. *The above order would indicate that the SDM has, in our view, wrongly invoked the powers under Section 146(1), Criminal Procedure Code Under Section 146(1), a Magistrate can pass an order of attachment of the subject of dispute if it be a case of emergency, or if he decides that none of the parties*

was in such possession, or he cannot decide as to which of them was in possession. Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145, Criminal Procedure Code. It can only be read in the context of Section 145, Criminal Procedure Code. If after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof.

13. The ingredients necessary for passing an order under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

14. We find from this case there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of

emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant - Ashok Kumar, whether it is legal or not, is not for the SDM to decide.

15. We also notice that the respondent herein has filed a civil suit for injunction before Civil Judge (J.D.) Haridwar on 02.09.2009 and an application for interim injunction is also pending, on which the civil court has issued only a notice. An Amin report was called for and Amin submitted its report on 21.11.2009. Civil suit was filed prior in point of time, it is for the civil court to decide as to who was in possession on the date of the filing of the suit. In any view, there is nothing to show that there was an emergency so as to invoke the powers under Section 146(1) to attach the property, specially, when the civil court is seized of the matter. Under such circumstances, we are inclined to set aside the order passed by the SDM dated 25.11.2009 and the order of the High court dated 27.03.2012.”

15. In view of the above discussion, I am of the considered view that the proceedings under Section 145 Cr.P.C. were wrongly initiated and all the subsequent orders including the impugned order dated 01.05.2001 (Annexure P-23) passed by Sub-Divisional Magistrate (East) UT, Chandigarh and order dated 09.08.2003 (Annexure P-25) passed by the Additional Sessions Judge, Chandigarh were apparently illegal and unsustainable. It would have been more appropriate for the SDM, Chandigarh to relegate the parties before the civil court, where the suit was already pending at the time of initiation of the proceedings under Section 145 Cr.P.C. In fact, the law is well settled that the proceedings under Section 145 Cr.P.C. cannot be used as a tool to get the possession of the land on the basis of title or otherwise.

16. Considering the above-said facts and circumstances of the case and coupled with the reasons aforementioned, the present petition succeeds and the impugned order dated 01.05.2001 (Annexure P-23) passed by Sub-Divisional Magistrate (East) UT, Chandigarh and order dated 09.08.2003 (Annexure P-25) passed by the Additional Sessions Judge, Chandigarh are ordered to be quashed. It is clarified that this Court has made the above observations with regard to the legality of initiation of the proceedings under Section 145/146 Cr.P.C. and only the legality of the impugned orders Annexures P-23 and P-25 has been decided. The parties in the present petition would be at liberty to make appropriate applications before the competent courts, where the matter is already *sub judice* for adjudication of their rights with regard to the property in question.

17. The present petition stands allowed in the above terms. All the pending application(s), if any, shall also stand disposed of, accordingly.

(N.S. SHEKHAWAT)
JUDGE

31.01.2024
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO