

(1980) 01 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sardari Lal and Another

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 1, 1980

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 107, 145, 146, 151, 482

Citation: (1980) CriLJ 1151

Hon'ble Judges: M.M. Punchhi, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M.M. Punchhi, J.

This is a petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, for quashing a preliminary order dated 14-4-1980 passed by the Sub Divisional Magistrate, Batala, in proceedings u/s 145, Cr.P.C. This petition is listed at the notice of motion stage, but since I have heard the parties' counsel at length, it would be expedient to dispose it of finally, in the peculiar facts and circumstances.

2. A parcel of land measuring 10 acres, fully described in the petition, situated in village Puranawala, Tehsil Batala, District Gurdaspur, has, for the moment standing ripe wheat crop due for harvesting. Sardari Lal, petitioner No. 1, and his General Attorney, Raghbir Singh, petitioner No. 2, claim to be in possession of the said land and to have sown the standing wheat crop. On the other hand, respondents Nos. 3 to 8 being Kishan Singh and his five sons, claim to be in possession of the said land and the standing crop. It appears that Shri G.S. Multani, P.C.S. Sub Divisional Magistrate, Batala, suo motu passed a preliminary order u/s 145(1), Cr.P.C. in the following terms:

It has come to my notice that there is some dispute over land in village Puranawala between Kishan Singh on the one hand and Sardari Lal on the other hand and, therefore, is likelihood of breach of peace. The S. H. O., Police Station, Dera Baba Nanak, should visit the spot and see if any security measures are required to be taken and take necessary action Under Section. 145, Cr.P.C. If there is likelihood of any breach over the cutting of the crop, action may also be taken to get the crop attached." The aforesaid order, being adequately suggestive, attracted a regular complaint u/s 145, Cr.P.C. from the S. H. O. Police Station Dera Baba Nanak arraying Kishan Singh and his five sons as the first party, and Sardari Lal and his General Attorney as the second party, to a dispute over the said land Under Section. 145, Cr.P.C. The S. H. O. conveyed that proceedings u/s 145, Cr.P.C. be initiated against both the parties. Proceedings under Secs. 107/151, Cr.P.C. were also contemplated against them. He also suggested that the ripened wheat be attached and Receiver be appointed. On that report, the Sub-Divisional Magistrate passed a second preliminary order u/s 145, Cr.P.C. which is to the following effect:

Whereas I am satisfied from the police report sent by the S. H. O. Police Station, Dera Baba Nanak, that there is a dispute over possession of land measuring 80 Kanals, comprising Khasra No. 35 R/I, 21, 38R/5, 6, 15, 16, 25, 35R/10, 11, 20, situated within the revenue estate of village Puranawala, Tehsil Batala as party No. 1 and party No. 2 claim possession on it.

2. And whereas I am satisfied after going through the police report that there is likelihood of breach of peace, I hereby direct that proceedings u/s 145, Cr.P.C. may be initiated and both the parties may be called to adduce their evidence in support of their respective claims;

3. Further from the circumstances of the case, i am satisfied that neither of the parties is in actual possession of the land in dispute, I order that the crop standing on the property - mentioned above be attached and order appointment of S. Gurbachan Singh, Kanungo, Circle Dera Baba Nanak, as Receiver to look after and account for the crop and render full accounts of the crop thus received and deposit the amount with this Court.

4. Further that the property will remain attached and will be looked after with due care by S. Gurbachan Singh, Kanungo, Dera Baba Nanak, who will be associated with necessary force by the S. H. O., Police Station, Dera Baba Nanak, as and when the same is required.

3. Apparently, there is no challenge to the first preliminary order passed by the Sub Divisional Magistrate, on 10-4-1980, and rightly so, because that is hardly any order within the spirit of Section 145(1) Cr.P.C. Challenge is to the second order which can safely be bifurcated parawise as it purports to pertain to the various sections seemingly employed to pass it. The first paragraph records satisfaction, that there is likelihood of breach of peace in relation to a dispute concerning land. The second

paragraph contains order u/s 145(1) Cr.P.C. Third & fourth paragraphs contained orders u/s 146 Cr.P.C. Separate challenge, has been made to the impugned orders seriatim.

4. It was contended by Mr. P.N. Aggarwal, the learned Counsel for the petitioners, that after recording satisfaction that there existed a dispute over possession of land, which was likely to lead to a breach of peace, the learned Sub Divisional Magistrate was further required to record the grounds of his being so satisfied. He further contends that the learned Sub Divisional Magistrate cannot merely avail of the knowledge he derived from the police report as if it was the ground itself for proceedings u/s 145 Cr.P.C. In other words, it was contended that the statement of grounds on his being so satisfied had to reflect his subjective satisfaction, by putting into operation his objectivity in words. There is merit in what the learned Counsel for the petitioners says, as virtually there appears to be no ground forthcoming in the order where-from it could be taken that the Sub Divisional Magistrate had anything more to do then merely to adopt as to what was suggested to him through the police report. In *Neti v. State of Haryana* 1976 CriLJ 469, Gurnam Singh, J., while dealing with an order of a similar kind, quashed the proceedings by quoting with approval a decision rendered by Tek Chand, J., in [Fagir Chand Sultani Ram and Another Vs. Bhana Ram Mansa Ram and Others](#), and another in [Alihusen Najarali Vs. The State of Gujarat](#), . The former decision contains the following quotation;-

That the Magistrate is required by Section 145 of the Code of Criminal Procedure, to state the grounds of his satisfaction, as to the existence of likelihood of a breach of the peace; he must permit to be produced the material on the basis of which he has to express his satisfaction. The law while giving to the Magistrate ample latitude, insists, that in his preliminary order, he must set out the grounds which are the basis of his satisfaction. The reasons on the basis of which he declines to pass the initiatory order must also be stated.

5. Besides the order being bereft of the reason,,the order passed u/s 146 Cr.P.C. is also questioned, being beyond the scope of said section. Section 146(1) Cr.P.C, is in the following terms:

146.(1) If the Magistrate at any time after making the order under Sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof.

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

It is plain from the language employed in the section that at any time after making the order under Sub-section (1) of Section 145, a Magistrate can pass an order of attachment of the subject of dispute if it be a case of emergency. Thereafter, he has to embark upon an enquiry as contemplated u/s 145 Cr.P.C. and then arrive at a decision. If his decision is in favour of one party and he declares him to be in possession of the land on the date when he passed the preliminary order, obviously, he will release possession in his favour and lift the attachment. But in case he decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in possession, he can attach the subject matter of dispute, or keep the subject matter of dispute still attached, if already under emergent attachment, until a competent Court has determined the rights of the parties thereto with regard to the person entitled to possession thereof. Obviously, at the initiation of the proceedings, he is neither in a position to, nor is capable of, deciding that neither of the parties was then in possession, or is unable to satisfy himself as to which of them was then in such possession. It is patent that in the impugned order, while passing orders u/s 146 Cr.P.C., the learned Sub-divisional Magistrate has jumped to the satisfaction, that neither of the parties is in actual possession of the land in dispute. that does not seem to be the spirit of the section. He has nowhere recorded his satisfaction that it was a case of emergency, requiring him to attach the subject matter of the dispute pending enquiry before him. It appears to me that he over-stepped his jurisdiction. On this score as well the impugned order is unsustainable.

6. The learned Counsel for the state as well as of the private respondents contended that since there was ripe wheat crop standing on the land in dispute, the impugned order should be treated to be one passed u/s 145(8) Cr.P.C. which authorises a Sub-Divisional Magistrate to take care of a crop subject to speedy and natural decay, making an order for custody and sale of such crop, and thereafter, upon the completion of enquiry, to make such order for disposal of such property, or the sale proceeds thereof, as he thinks fit. A joint reading of paragraphs 3 and 4 of the impugned order shows that he has attached the crop as well as the land. Though he has ordered the crop to be looked after and be accounted in the manner suggested, he has kept attachment of land intact pending enquiry. Sub-section (8) of Section 145 Cr.P.C, does not permit attachment of a crop, but only permits taking care of that crop in a given situation. The learned Sub-Divisional Magistrate does not seem to have applied his mind in that direction and I would not like to sub-stitute that order with one, which is capable of being passed under Sub-clause (8) of Section 145 Cr.P.C. as the preliminary order itself is bereft of reasons.

7. Also, it deserves highlighting that at the instance of respondents Nos. 3 to 8, a civil suit for injunction stands instituted and is pending against the petitioners. In that suit, an interim, order has been passed by the Civil Court to maintain status quo and that is operative for the while. In the presence of the said order and when the Civil Court was seized of the matter, proceedings u/s 145 Cr.P.C. were not called for.

At best, if there was likelihood of the breach of peace, the Sub Divisional Magistrate could have proceeded against the parties u/s 107 Cr.P.C. and which step, as per police report, was contemplated to be taken. Apparently, the question as to which of the parties was in possession of the land in dispute, was the subject matter in a Civil Court as well and the present proceedings before an Executive Magistrate could not be initiated as a sub-stitute thereof.

8. For the reasons aforesaid, this petition succeeds and the order of the Sub Divisional Magistrate dated 14-4-1980, and the proceedings u/s 145 Cr.P.C. are quashed.