

(2008) 05 P&H CK 0161

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Miscellaneous No. 22597-M of 2007

Jasvir Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: May 27, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 146, 482

Citation: (2008) 4 RCR(Criminal) 466**Hon'ble Judges:** Vinod K.Sharma, J**Bench:** Single Bench**Advocate:** Vikas Behl, for the Appellant; K.S. Pannu, AAG. for the Respondent No. 1 and Mr. R.S. Ghuman, Advocate for the Respondent No. 3, for the Respondent**Final Decision:** Allowed

Judgement

Vinod K. Sharma, J.

The petitioners seek quashing of the order dated 28.3.2007 attached as Annexure P.12 vide which learned Sub Divisional Magistrate, Phillaur has initiated proceedings u/s 145 of the Code of Criminal Procedure (for short the Code) and has also appointed Receiver.

2. The petitioners seek quashing of proceedings u/s 145 of the Code on the plea no case for initiation of proceedings is made out from the application made by respondent No. 3 u/s 145 of the Code. He referred to Paras Nos. 2 and 3 of the application filed u/s 145 of the Code which read as under :-

"2. That the applicant Sarabjit Singh is the duly recorded co-owner in possession of the suit property to the extent of 1/3 share in the landed property situated at village Landhra, Tehsil Phillaur, as per copy of jamabandi for the year 2002-03. The copies of jamabandi are attached herewith.

3. That respondent Nos. 1, 2 and 3 are also the co-owners in the above said property, but the respondents are bent upon to create dispute with the applicant through his attorney with regard to the landed property mentioned above. There is every likelihood of the breach of peace between the applicant and the respondents with regard to the possession and use of the property in question. Even the respondents are creating hurdle for the applicant in his regular use of the suit property. The respondents are time and again creating difficulties for the applicant in the use of the suit property. Even the respondents Nos. 1, 2 and 3 are bent upon to usurp the total crop benefit out of the suit property illegally and forcibly. The respondents are trying to take undue advantage out of the situation as the applicant is in abroad and the attorney of the applicant has come from a distant village to look after the suit property. Whenever the applicant through his attorney comes to the suit property to watch the interest of the applicant then all the times, all the respondents there create such a situation, which may give rise to the dispute all the times and there is always an apprehension of breach of peace between the applicant and the respondents with regard to the suit property. The applicant himself and through respectable, many times requested the respondents not to create any hurdle in the use and occupation of the suit property by the applicant but all the respondents bent upon to cause harassment and loss to the rights of the applicant. The oral request of the applicant many times turned futile upon the deaf ears of the respondents. Hence there is an imminent danger regarding the breach of peace with regard to the suit property between the applicant and respondent. The applicant, therefore, is to take step being a law abiding citizen that the possession of the total suit property of the applicant and respondents is taken by the Hon"ble Court and benefits and gains of the crop standing in the suit property may kindly be protected either in the hands of this Hon"ble Court or in the hands of the representative of the Hon"ble court."

3. On consideration of a matter learned Sub Divisional Magistrate vide order dated 10.5.2006 dropped the proceedings initiated on the application made by the respondent.

4. Proceedings u/s 145 of the Code have been initiated again by the learned Sub Divisional Magistrate, Phillaur on presentation of calendera by the police. The order of attachment which is under challenge was also passed on the proceedings initiated on presentation of calendera.

5. Mr. Vikas Behl, learned counsel appearing on behalf of the petitioners contends that the proceedings u/s 145 of the Code as well as the appointment of Receiver and subsequent proceedings arising there from are liable to be quashed for the reasons that it is admitted case of the complainant-respondent No. 2 that they are co-owners of the landing dispute. The contention of the learned counsel for the petitioners, therefore, is that no proceedings u/s 145 of the Code can be initiated against the co-owners. In support of this contention learned counsel for the petitioners placed

reliance on the judgment of Hon"ble Karnataka High Court in the case of Nilima Barman v. Ratima Barman, 2003 (2) RCR (Cri) 278, wherein Hon"ble Karnataka High Court has been pleased to lay down as under :-

"8. After hearing the learned counsel for the petitioner, I am of the view that this is a fit case in which jurisdiction u/s 482, Cr. P.C. should be exercised, by this Court, inasmuch as, I am of the opinion that there is no evidence to come to the conclusion as arrived at by the Executive Magistrate. If the present petitioner is a co-owner, then she is a co-owner on each inch of the land owned by the two co-owners and in that eventuality the question of invoking the provisions u/s 145 Cr. P.C. would not arise."

6. Learned counsel for the petitioner by placing reliance on the judgment of this court in the case of Shish Pal v. State of Haryana, 2001 (2) RCR(Crl.) 826 contended that when the parties claim joint possession no proceedings under sections 145/146 of the Code can be initiated. This court has been pleased to lay down in Shish Pal's case (supra) as under:

"15. Therefore, taking into consideration all these aspects, I am of the view that even when according to the Calendera it has been stated that the land is Mushtarka Khata cultivation of the petitioners and others, which means that they are in joint possession of the land in dispute, the proceedings u/s 145 Cr. P.C. are not competent. If the 4th respondent, who has got a sale deed and an agreement to sell in her favour and who also claims to be in joint possession has any grievance and wants any remedy, she will have to take recourse to suitable proceedings in accordance with law, but cannot resort to the proceedings u/s 145 Cr. P.C., against the petitioners who are in joint possession. Therefore, the initiation of the proceedings u/s 145 Cr. P.C and the appointment of the Receiver for the land in dispute cannot be sustained."

7. Learned counsel for the petitioners also contended that the proceedings are without jurisdiction as on 10.5.2006 learned Sub Divisional Magistrate was pleased to drop proceedings and therefore he was not competent to reopen the same as there is no power of review with the Sub Divisional Magistrate. In support of this contention, learned counsel for the petitioners placed reliance on the judgment of this court in the case of Harnam Singh v. Mall Singh, 2002 (4) RCR (Cri) 243. Para No. 5 of the said judgment reads as under :-

"5. During the course of arguments, learned Counsel for the petitioner could not explain how after the Executive Magistrate, Ferozepur as per order dated 28.12.1997 had dismissed the calendera filed u/s 145 of the Code, he could revive the controversy by taking up the matter all over again and pass order dated 12.5.1997 declaring Arjan Singh etc. to be in possession of the land in dispute. Manifestly, after passing the order dated 28.2.1997, the Executive Magistrate was not competent to revive the proceedings and declared Arjan Singh to be in possession of the land in

dispute as per order dated 12.5.1997. Even otherwise it is clearly spelled out from the record that right of the parties in relation to the possession of the suit land had been settled by the Civil Courts as noticed above. Consequently, one of the parties can be allowed to invoke the provisions of Section 145 of the Code and get the party, whose possession had been upheld by the Civil Court, dispossessed in the manner sought to be done on behalf of the petitioner. Therefore, initiation of the proceedings on the basis of calaendra at the behest of the petitioner was wholly misconceived because after the rights of the parties had been settled and the possession over the land in dispute determined, the Executive Magistrate could not invoke his jurisdiction so as to initiate the proceedings u/s 145 of the Code."

8. Mr. R.S. Ghuman, learned counsel appearing on behalf of respondent No. 3 supported the initiation of proceedings u/s 145 of the Code on the plea that the petitioner has disputed the factum of the parties being co- owners and therefore, he cannot take advantage of the fact that the respondent has claimed that the parties are co-owners of the land in dispute to seek quashing of the proceedings. However, this plea of the learned counsel for the respondent cannot be accepted as the proceedings have been initiated on the application made by complainant and once it is admitted case of the respondent himself that the parties are co-owners as per the averments made in para Nos. 2 and 3 of the application there was no jurisdiction with the learned Sub Divisional Magistrate to initiate proceedings in view of the law laid down by this court in Shish Pal's case (supra).

9. Mr. R.S. Ghuman, learned counsel for respondent No. 3 also contended that the law laid down in Harnam Singh's case (supra) would not be applicable to the facts of the present case and learned Sub Divisional Magistrate has drafted the proceedings initiated on the application moved by the complainant. However, second order has been passed on the basis of calendera submitted by the police. Said proceedings have to be considered as independent of each other. This plea of the respondent also cannot be accepted. It is not in dispute that the calendera was also submitted on the application moved by the respondent and the allegations are the same as made in the application moved u/s 145 of the Code and therefore, the learned Sub Divisional Magistrate had no jurisdiction to initiate proceedings after the same were dropped vide order dated 10.5.2006.

10. It is also the contention of the learned counsel for the respondent that the learned Sub Divisional Magistrate can always invoke the provisions of Section 145 of the Code if there is apprehension of dispute qua immovable property as the learned Magistrate has only to decide which of the parties was in possession. Thus, the stand of respondent No. 3 is that initiation of proceedings u/s 145 of the Code do not call for any interference by this court.

11. On consideration of the matter, I find force in the contentions raised by the learned counsel for the petitioners.

12. Once it is admitted by the complainant himself in the petition filed u/s 145 of the Code that the petitioners are co-sharers and in joint possession of the property in dispute the proceedings u/s 145 of the Code cannot be initiated in view of law laid down in the case of Nilima Barman v. Ratima Barman (supra) and Shish Pal v. State of Haryana.

13. Furthermore, the depute raised by the respondent by moving application u/s 145 of the Code and one started by calendera cannot be said to be two different claims so as to enable the Sub Divisional Magistrate to reject the one and proceed with another. The proceedings, therefore, are liable to be quashed also in view of the law laid down by this Court in the case of Harnam Singh v. State of Haryana (supra).

14. Consequently, the petition is allowed. Proceedings initiated u/s 145 of the Code as well as the appointment of Receiver is quashed.

15. However, the parties would be at liberty to get their dispute decided either in the revenue court or civil court as advised.