(1992) 05 AHC CK 0101

Allahabad High Court

Case No: Criminal Revision No. 982 of 1991

Nihal Singh		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: May 22, 1992

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116, 145, 145(1), 146(1)

Citation: (1992) 34 ACR 383

Hon'ble Judges: Surya Prasad, J

Bench: Single Bench

Advocate: Viresh Misra, for the Appellant; A.B.L. Gaur, for the Respondent

Judgement

Surya Prasad, J.
This is a criminal revision against the judgment and order dated 26-6-91 passed by the learned City Magistrate, Agra in State v. Sardar Singh Criminal Case No. 13 of 1991 u/s 145 Code of Criminal Procedure suspending the proceedings and directing for continuing attachment of the shop of the revisionist.

2. The facts of the case giving rise to this criminal revision briefly stated are that the revisionist Nihal Singh filed a civil suit being the civil suit No 463 of 1990 Nihal Singh v. Sardar Singh on 9-4-90 for a permanent injunction against the Defendant from interfering with his possession over the shop No. 9/3 situate in Bagh Muzaffar Khan, Agra. The Plaintiff Nihal Singh moved an ad-interim injunction application simultaneously with the institution of the said suit. An exparte ad-interim injunction was obtained by him on the basis of that application. The Defendant Sardar Singh filed objection against the ad-interim injunction application. The ad-interim injunction application was ultimately rejected on 11-5-90 while setting aside the injunction order passed thereon. Against the rejection order dated 11-5-90 the Plaintiff Nihal Singh preferred a misc. appeal being Misc. Appeal No 149 of 1990 Nihal Singh v. Sardar Singh. That appeal was allowed by

the learned IX Additional District Judge, Agra vide his detailed judgment and order dated 25-4-91 while allowing the ad-interim injunction application and setting aside the order dated 11-5-90 passed by the learned Additional Civil Judge, Agra rejecting the same. The learned IX Additional District Judge, Agra restrained the Defendant Sardar Singh through his aforesaid judgment and order from evicting Nihal Singh illegally from the shop in dispute during the pendency of the aforesaid suit''

3. It is further alleged that Sardar Singh concealing all the facts regarding the pendency of the aforesaid civil suit between the same parties in respect of the same subject matter moved an application before the City Magistrate, Agra on 20-4-90 for the initiation of the proceedings u/s 145 Code of Criminal Procedure. The learned City Magistrate called for a report from the police station Hari Parwat vide his order dated 25-4-90 The police submitted report on 27-4-90 allegedly in collusion with the opposite party No. 2 Sardar Singh. A telegram to that effect was sent to the District Magistrate, Superintendent of police Agra, City Magistrate and SHO, P. S. Hari Parwat each vide Anne-xure-1. The police also initiated proceedings u/s 107/116 Code of Criminal Procedure which is still pending.

4. It is further alleged that the City Magistrate re-acting on the basis of wrong information supplied by the police, passed a preliminary order u/s 145 Code of Criminal Procedure and also exparte stay order dated 28-4-90 for attachment of the disputed shop. But that order was not implemented during the period 28-4-90 to 10-5-90. The shop in dispute was, however, attached by the police on 11-5-90.

5. It is further alleged that the proceedings u/s 145 Code of Criminal Procedure were collusive and illegal. The opposite party No. 2 Sardar Singh also moved a review application before the learned IX Additional District Judge, Agra, which was also rejected. The learned City Magistrate was under the influence of Sardar Singh. The Appellant Nihal Singh moved a transfer application supported with an affidavit vide Annexure-4 against the learned City Magistrate for transfer of the case from his court to some other competent court. It is further alleged that the transfer application was pending and a copy of the judgment and order passed by the learned IX Additional District Judge, Agra was available and yet the learned City Magistrate passed the impugned order dated 26-6-91, which is illegal and against the law and facts. The criminal revision has been preferred against the said order as mentioned earlier.

6. Heard the learned Counsel for the parties at length and perused the record.

7. The civil suit No. 463 of 1990 was instituted by Nihal Singh against Sardar Singh in respect of the shop in dispute. That suit Is still pending. The above exparte ad-interim injunction order was obtained by the Plaintiff That was ultimately set aside. The above mentioned misc appeal was filed against the order rejecting the ad-interim injunction application and setting aside the order passed thereon, During the pendency of the aforesaid misc. civil appeal, proceedings u/s 145 Code of Criminal Procedure were

initiated by Sardar Singh in respect of the same subject matter. The judgment and order of the learned IX Additional District Judge, Agra has become final between the parties in respect of the subject matter in dispute so far.

8. All the above facts do not stand disputed between the parties.

9. The learned Counsel for the revisionist has vehemently argued that the proceedings u/s 145 Code of Criminal Procedure could not have been initiated during the pendency of the civil suit. In "Ram Surmer Puri Mahant v. State of U.P. 1985 (22) SC 45, the Hon''ble Supreme Court has observed as under:--

When a civil litigation is pending for property wherein the question of possession is involved and has been adjudicated. We see hardly any justification for initiating a parallel criminal proceeding u/s 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 Respondent 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 the Civil Court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of the 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 and the order of the learned Magistrate should be quashed.

10. In "Padam Ravinder Jeet Singh v. Jagat Singh XXV 1988 ACC 136, the Hon''ble Supreme Court has observed as under:--

It is well established in law that criminal courts have to honour decision rendered by civil courts and on that principle, in view of the two decisions of the civil courts, possession of the property on the basis of title and dismissal of their claim of restoration of possession should have been upheld

In "Jeet Narain v. Naresh XXVIII 1991 ACC 364 it has been inter-alia observed as under:--

It is the duty of the police officer to report about apprehension of breach of peace. If he proceeds further and gives any report regarding possession he exceeds his jurisdiction and unless he comes in the witness-box for giving evidence of possession, his report about possession cannot be perused.

11. In "Ranjeet Singh v. Moti Lal Katiyar XXV 1988 ACC 26, where in the following observations have been made:--

I have already held that the proceedings u/s 145 Code of Criminal Procedure initiated in the court of Sub-Divisional Magistrate, Bilhaur, Kanpur Dehat, by the opposite parties, is mala fide, vexatious and without jurisdiction in view of the fact that the civil suit where the question of possession was Involved was pending in the civil court on the date when the order u/s 145(1) and 146(1) Code of Criminal Procedure were passed in the aforesaid proceedings and an injunction order was very much in operation. Therefore, the aforesaid proceedings cannot be allowed to continue as it would be nothing but abuse of the process of Court.

12. In "Mahendra Prasad Singh v. Drig Pal Singh alias Babban Singh 1971 ACC 93, the following observations have been made:--

Magistrate after having dropped the proceedings u/s 145 has jurisdiction to pass incidental or ancillary orders after withdrawing the attachment, to direct, if there is sufficient material before him showing that the property was attached from the possession of one party, that the property should be delivered to him. If however after the proceedings u/s 145 of the Code of Criminal Procedure have been dropped sufficient material does not exist on the record to enable the Magistrate to conclude from whose possession the property was attached without receiving additional evidence then the Magistrate has no jurisdiction to enter into such an enquiry.

13. Having considered all the facts end circumstances of the case and having perused the cases referred to above, I am of the opinion that the proceedings u/s 145 Code of Criminal Procedure in case No. 13 of 1991 to which this revision relates, should be quashed. The same are accordingly quashed. Consequently the orders dated 26-6-91 and 28-4-90 stand vacated. It is however, open to either party to move the civil court in the aforesaid civil suit No. 463 of 1990 for appropriate interim order, if so advised in the event of the dispute relating to possession.