(1987) 08 MP CK 0018

Madhya Pradesh High Court (Indore Bench)

Case No: None

Mangilal		APPELLANT
	Vs	
Bangmal and Another		RESPONDENT

Date of Decision: Aug. 31, 1987

Acts Referred:

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

Citation: (1988) CriLJ 1905

Hon'ble Judges: K.L. Shrivastava, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K.L. Shrivastava, J.

1.This revision petition is directed against the order dt. 9-1-1986 passed by the 1st Additional Sessions Judge, Shajapur whereby setting aside the order passed by the learned Sub-Divisional Magistrate, Sarangpur he has ordered that the proceedings u/s 145 of the Criminal Procedure Code, 1974 (for short ''the Code'') be dropped.

2. Circumstances giving rise to the revision petition are these. On information laid before him that a dispute relating to the possession of the house property situate at Sarangpur, between one Chandmal and the present non-applicant 1 Bagmal likely to cause a breach of peace exists, the learned Sub-Divisional Magistrate initiated proceedings u/s 145 of the Code and passed a preliminary order under Sub-section (1) thereof on 12-10-83.

3. The present petitioner Mangilal is the successor in title of the said Chandmal.

4. During the pendency of the proceedings aforesaid the non-applicant 1 Bagmal on 11-4-84 filed an application before the learned S.D.M., praying that the said proceedings be dropped as in Civil Suit No. 1 A of 1984 for possession of the

property in dispute and for temporary injunction filed in the competent Civil Court, a bi-party order dt. 20-3-1984 has been passed in his faovur and the petitioner Mangilal has been temporarily restrained from interfering with his possession over the said property,

5. The learned S.D.M. dismissed the aforesaid application. The present non-applicant Bagmal challenged the said order in revision and the learned Additional Sessions Judge who decided it, relying on the decision in Ram Sumer Puri Mahant Vs. State of U.P. and Others, passed the impugned order.

6. The contention canvassed by the petitioner''s learned Counsel is that the observation in the decision, in Ram Sumer Puri''s case (supra) must be read as relating to the facts of the case and were not applicable to the facts of the case in hand. According to the learned Counsel, the pendency of the civil suit or the order granting temporary injunction do not have the effect of ousting the jurisdiction of the learned S.D.M. and under Sub-section (6) of Section 145 of the Code, he could order restoration of possession. In support of his submissions he has placed reliance on several decisions including those in R.H. Bhutani Vs. Miss Man J. Desai and Others, which is by three Judges, Mathuralal Vs. Bhanwarlal and Another, and (1940) 8 ITR 635 (Privy Council) .

7. The contention of the learned Counsel for the non-applicant Bagmal is that in view of the pending civilsuit and the order granting temporary injunction there remains no occasion for any apprehension of breach of the peace and as held in Ram Sumar Pun''s case (1985 Cri LJ 752 (SC) (supra) the parallel criminal proceedings were rightly ordered to be dropped.

8. The point for consideration is whether the revision petition deserves to be allowed.

9. It may be stated at the outset that as pointed out in the decision in Mathuralal Vs. Bhanwarlal and Another, Sections 145 and 146 of the Code together constitute a scheme for the resolution of situation where there is likelihood of breach of the peace because of a dispute of the kind therein contemplated. It is clear from Sub-section (1) of Section 145 that the existence of a dispute likely to cause a breach of the peace constituted the very foundation of the Magistrate''s jurisdiction thereunder. This jurisdiction, it may be stated, is co-extensive with the existence of the dispute of the nature referred to above. Misuse of the provisions by interested party has to be carefully guarded against.

10. In the decision in R.H. Bhutani Vs. Miss Man J. Desai and Others, it has been pointed out that sufficiency of material for initiation of proceedings u/s 145 of the Code is in the discretion of the Magistrate and the High Court, in exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate. In the decision in Rajpati Vs. Bachan and Another, it has been held that once a preliminary order drawn-up by the Magistrate

sets out the reasons for holding that a breach of the peace exists, it is not necessary that the breach of the peace should continue at every, stage of the proceeding. Unless there is clear evidence to show that the dispute has ceased to exist so as to bring the case within the ambit of Sub-section (5) of Section 145 and unless such contingency arises the proceedings have to be carried to their logical end culminating in the final order under Sub-section (6) of Section 145. Therein it has been further observed that assuming that omission to mention in the final order as to breach of the peace it was in the domain of curable irregularities. Ultimately it was held that it was not correct on the part of the High Court to have interfered with the order of the Magistrate on a purely technical ground when no prejudice was shown and the aggrieved party had a clear remedy in the Civil Court.

11. The inquiry contemplated u/s 145 of the Code concerns itself solely with the question of physical possession of the subjection of dispute at the date of the preliminary order and not with the merits or claims of any of the parties to a right to possess it. This is clear from the provision embodied in Sub-section (4) of this section. It is also pertinent to point out that by virtue of the fiction embodied in the proviso to this Sub-section in case of forcible and wrongful dispossession during the specified preceding period, the Magistrate has the discretion to treat the party so dispossessed as in possession on the date of the preliminary order. The proviso may profitably be reproduced. It runs thus:

Provided that, if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed, within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under Sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1).

(emphasis supplied)

12. Section 146(1) of the Code providing for attachment of the subject of dispute in the three situations therein catalogued runs thus:

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 i n 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.

(empasis supplied)

13. As pointed out in the decision in Mathuralal Vs. Bhanwarlal and Another, Section 146 has to be read in the context of Section 145 and cannot be construed to mean

that once an attachment is effected in any of the three situations therein mentioned, the dispute can only be resolved by a competent Court and not by the Magistrate effecting attachment. The provision does not contemplate dropping of the proceedings after attachment. Even after emergency attachment the Magistrate has to proceed with the inquiry to decide the question of possession referred to in Section 145. According to the provision the attachment is to continue "until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof." The proviso to Sub-section (1) of Section 146 of the Code providing for earlier withdrawal of attachment is in these terms:

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

14. In case as a result of the inquiry any of the parties is found to be or have been in possession of the subject of dispute, the Magistrate has to pass a final order u/s 145(6)(a) of the Code regarding possession and the attachment has then to be withdrawn as with the passing of the final order in terms of the provision referred to above there can be no question of any likelihood of breach of the peace as pointed out towards the end of para 5 of the decision in Mathuralal''s case (1980 Cri LJ) (supra).

15. In R.H. Bhutani Vs. Miss Man J. Desai and Others, it has been held that even where a person has a right to possession but taking the law into his hands makes a forcible entry otherwise than in due course of law, it would be a case of both forcible and wrongful dispossession. In para 14 of the decision several other decisions including the one in Bai Jiba Vs. Chandulal Ambalal, have been referred to and towards the end of the para it has been observed as under:

It is thus fairly clear that the fact that dispossession of the appellant was a completed act and the appellant had filed a criminal complaint and the police had taken action thereunder do not mean that the Magistrate could not proceed u/s 145 and give directions permissible under Sub-section (6).

16. In the decision in Amaritlal''s case AIR 1947 Mad 133 : 48 Cri LJ 435 it has been held that it is not in all cases that actual force should be used to make the eviction of forcible one. Misrepresentation and improper threats are sufficient to constitute forcible dispossession. Therein the petitioner was in possession of a building through his servants and the other party obtaining a notice from the- District Magistrate on incorrect representation made the servants vacate the building by showing the notice to them. It was held that there was a forcible eviction of the person who was entitled to be in possession.

17. In the decision in Jiba''s case (1926)27 Cri LJ 661 (Bom) (supra) it has been held that it would be unfair to allow the other party to take advantage of his forcible and wrongful possession and that the dispossessor has since then been in possession or

has filed a suit for declaration of title and for injunction restraining disturbance of his possession is no ground for the Magistrate to refuse to pass an order for restoration of possession once he is satisfied that the dispossessed party was in actual or deemed possession under the provision.

18. From the decisions referred to in the preceding three paragraphs it is clear that the intendment of law is that the Court must not countenance any premium being put on lawlessness and the party which as a good law abiding citizen has not resorted to counter-violence to regain possession of the subject of dispute should not be placed at a disadvantage.

19. At this stage reference may also be made to the provision embodied in Sub-section (2) of Section 146 of the Code. According to this provision when the Magistrate attaches the subject of dispute he may appoint a receiver only if no receiver in relation to such subject of dispute has been appointed by any civil Court and in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, a Magistrate shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court.

20. From what has been discussed above it is amply clear that importance is of the competent court and in the jurisdiction which the Magistrate gets u/s 145 of the Code, he is primarily concerned with the preservation of public peace and tranquillity till the determination by a competent Court of the rights of the contending parties in regard to the entitlement to the possession of the subject of dispute and that this jurisdiction is co-extensive with the existence of a dispute of the nature contemplated in the provision. In this connection the decision in Bhinka and Others Vs. Charan Singh, is pertinent.

21. In the decision in Sureshchandra''s case 1983 Jab LJ 146 relying on the decision in Iqbal Mohammad''s case 1973 Jab LJ 33 and Mathuralal Vs. Bhanwarlal and Another, it has been held that the proceedings contemplated u/s 145 read with Section 146 of the Code are basically different from a suit for declaration and injunction. The conflicts of jurisdiction have, of course, to be avoided but if there is no likelihood of any conflict merely the institution of a civil suit or civil suits is no bar to the Magistrate exercising his jurisdiction for performing his function for preventing breach of the peace. The decision in Puranchand''s case 1983 Jab LJ 427 is also pertinent wherein it has been held that filing of a civil suit and obtaining status quo does not oust the jurisdiction of the Magistrate to act under Sections 145 and 146 of the Code. In the decision in Iqbal Mohammad''s case (supra) it has been held that despite a conclusion contrary to that of a Civil Court on the question of a particular party being in possession of the subject of dispute on the relevant date, the Magistrate cannot in pursuance of his order direct delivery of possession of the property to the successful party if the party in whose favour the injunction order was passed has, under the cloak of that order, somehow managed to come in

possession thereof.

22. Reference may now be made to the observations in Ram Sumer Puri''s case 1985 Cri LJ 752 (SC) (supra) which is by two Judges. Therein in para 2 it has been observed as under:

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 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 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 order 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.

23. The contention of the learned Counsel for the non-applicant Baghmal is that the aforesaid observations made by the Apex Court when the suit for possession and injunction had been dismissed and only appeal was pending are entitled to respect and they would show that they are applicable irrespective of the fact whether the proceedings u/s 145 are initiated prior to the civil litigation or afterwards. According to him the observations apply with full force even though the civil court might not have given any finding tentative or final on the question of possession and that the substance of the matter is that the civil court is seized of the matter and "parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver". In the decision in Anwar Vs. Wahidan and Others, this Court has pointed out that the observations of the Apex Court are entitled to respect.

24. The contention of the learned Counsel for the petitioner is that if the mere pendency of a civil litigation or an order granting temporary injunction restraining disturbance of possession is held to warrant dropping of the proceedings u/s 145 then the provision in Sub-section (6)(a) thereof as to restoration of possession even on the basis of fiction which has also been emphasised by the three Judges in A.K. Chakravarty and Another Vs. The State, may be rendered sterile and a dispossessor may by obtaining an order of temporary injunction place himself in an advantageous position as compared to the law abiding citizen. The provision in Section 145(6)(a) as to the final order is in these words:

If the Magistrate decides that one of the parties was, or should under the proviso to Sub-section (4) be treated as being in such possession of the said subject, he shall

issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

It is further urged that in the decision in Ram Sumer Puri''s case 1985 Cri LJ 752 (SC) (supra) decision had been rendered by the Court and the observations of the Supreme Court therein made have to be read in the context of the facts of that case. Reliance has been placed on the following observations in the decision in (1940) 8 ITR 635 (Privy Council) :

Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found

25. It may be pointed out that temporary injunction is not granted for the mere asking. The party who is in wrongful possession of the property is not entitled to the relief of temporary injunction. In this connection the decision in Komalsingh''s case (1986) 1 MPWN 116) is pertinent. Therein relying on the decision in Gangubai Bablya Chaudhary and Others Vs. Sitaram Bhalchandra Sukhtankar and Others, it has been pointed out that before it may be held that the party has made out a prima facie case it has not. merely to prove possession over the property but has also to show that the possession has its roots in some legal right. Further as pointed out in the decision in Shajuddin and Others Vs. Nagar Palika Parishad and Another, even where the concurrent conditions conferring jurisdiction to grant temporary injunction co-exist, the matter is still left in the domain of the Court''s judicial discretion whether or not to grant it. Where the party praying for the equitable relief of temporary injunction has not come with clean hands it is not entitled to it though the other conditions are fulfilled.

26. In view of the underlying object the proceedings u/s 145 are essentially preventive and not remedial. The remedy of the party dispossessed is under the civil law. If as a result of withdrawal of the suit or similar other contingency there again comes into existence an apprehension of a breach of the peace, the Magistrate can again initiate proceedings u/s 145 of the Code, if the circumstances so require.

27. It may be pointed out that in the Supreme Court decision in R.H. Bhutani Vs. Miss Man J. Desai and Others, it has not been laid down that despite determination of the controversy as to possession of the subject of dispute by a competent Court the proceedings u/s 145 of the Code must be continued for relief by an order u/s 145(6)(a). It has to be conceded that under the law as is clear from Section 145(5) and the proviso to Sub-section (1) of Section 146 the jurisdiction of the Magistrate is co-extensive with the existence of a dispute likely to cause a breach of the peace and if despite the pendency of civil litigation the dispute exists and he orders that the

proceedings u/s 145 shall continue, his order cannot be characterised as one without jurisdiction. In such a situation, as conflicts of jurisdiction have to be avoided, the question of continuance of criminal proceedings essentially is one of judicial discretion and not of jurisdiction. That discretion has to be exercised on a careful consideration of the totality of facts and circumstances then obtaining. As already pointed out the remedy of restoration of possession is in the discretion of the Court and the question of propriety of dropping the criminal proceedings has to be determined on broader principles pertaining to multiplicity of proceedings and conflicts of jurisdiction and not on hypothetical considerations of availability of remedy in the final order u/s 146(1)(a) of the Code in favour of a party.

28. It may be conceded that keeping in view the object behind Sections 145 and 146 of the Code, mere pendency of a civillitigation may not furnish any justification for dropping the proceedings thereunder. However, where the relief of temporary injunction cannot only be sought in the litigation but has been sought and obtained, it cannot legitimately be urged that despite the order granting temporary injunction apprehension of breach of the peace still exists. As pointed out in para 14 of this order according to the Supreme Court, after an order under u/s 145(6)(a) of the Code the attachment as provided in Section 145(1) has to be withdrawn as there can then be no dispute likely to cause a breach of the peace. An order granting temporary injunction is in no way less efficacious than the one u/s 145(6)(a) of the Code. If necessary, recourse to Section 107 of the Code can properly be taken. In this connection the decisions in Akheram''s case 1986 (Cr.) M.P. 65 and Lallan Prasad''s case 1982 MPWN 78 may profitably be perused.

29. There is nothing in Sections 145 and 146 of the Code to warrant the view that even when the dispute no longer exists the Magistrate is under an obligation to continue the proceedings for granting relief under u/s 145(1)(a) of the Code or till competent court finally determines the right thereto as to the person entitled to possession. The proceedings must be terminated once it is found that in view of the civil litigation the existence of the dispute of the nature contemplated u/s 145 of the Code no longer survives for that marks the end of the Magistrate''s jurisdiction thereunder. Re- ference in this connection may usefully be made to the decision in Ram Kumar''s case (1986) 1 MPWN 118 .

30. It may also be remembered that as pointed out in the decision in State of Orissa Vs. Nakula Sahu and Others, despite the wide words in which it is clothed, the revisional jurisdiction under the Code is limited in scope. That jurisdiction is discretionary and in exercise thereof the Court steps in to interfere to avoid any flagrant miscarriage of justice. The impugned order as it obviates multiplicity of proceedings and conflicts of jurisdiction is calculated to promote the ends of justice and is also in consonance with the views of the Apex Court in Ram Sumer Puri''s case (1985 Cri LJ 752) (SC) (supra). In the decision in State of Rajasthan Vs. Gurcharandas Chadha, the second order passed in revision though wrong and even without

jurisdiction was not interfered with because it was in consonance with the decision of the Supreme Court and was calculated to promote the ends of justice.

31. In the ultimate analysis I am of the view that no case for interference with the impugned order in exercise of this Court''s revisional jurisdiction has been made out. The revision petition is consequently dismissed.