

(1989) 02 CAL CK 0034

Calcutta High Court

Case No: C.R. No's. 526 and 824 of 1988

Sisir Rudra

APPELLANT

Vs

Sunil Rudra

RESPONDENT

Date of Decision: Feb. 16, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 144, 145, 146

Citation: (1989) 1 CALLT 327

Hon'ble Judges: A.K. Chatterjee, J

Bench: Single Bench

Advocate: Dilip Dutta and Amit Talukdar, for the Appellant; Haradhan Banerjee and Amitabh Pyne, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Chatterjee, J.

A dispute between two brothers over a business carried on in a shop room at 30/1. K. L. Burman Road within Golabari P.S. District Howrah under the name and style of Messrs. Bhupati Bhusan Rudra & Grand Son formerly belonging to their father, since deceased, gave rise to a proceeding u/s 144, Cr. P.C. drawn up on the 20th April 1988, which was challenged in this Court, being Criminal Revision 517 of 1988, by one of the brothers namely, the present opposite party No. 1 before Mukul Gopal Mukherjee, J. The learned Judge disposed of the application on 3.5.88 holding that no interference at that stage was called for but liberty was given to make an application before the Learned Magistrate for conversion of the proceeding to one u/s 145, Cr. P.C. Accordingly at the instance of the said opposite party the Learned Magistrate converted the proceeding and called upon the parties to file written statement by an Order made on the 15th June 1988. The other brother namely the present petitioner who has filed a Civil Suit on 18.4.88, being Title Suit No. 107 of 1988, over the same dispute has come up in revision being Cr. Rev. 824/88, against the Order of conversion of the proceeding as stated above, contending that since a

Civil Court is in seisin of the matter, a parallel proceeding u/s 145, Cr. P.C. is incompetent and so it is liable to be quashed.

2. There is no inflexible rule of law that a proceeding u/s 145, Cr. P.C. is incompetent or even improper whenever a Civil Suit over the same dispute is pending. In fact an Order which a Magistrate makes in a proceeding u/s 145, Cr. P.C. is necessarily limited in its duration as provided in Section 146 of the Code and it ceases to exist as soon as an adjudication is made by a Civil Court. Therefore, it follows that until an adjudication is made by a Civil Court, a proceeding u/s 145, Cr. P.C. can and indeed should be taken in appropriate cases. The foundation of the jurisdiction of a Magistrate to proceed u/s 145, Cr. P.C. is an apprehension of the breach of the peace and he does not decide any question of title to or even the right to possess any land. Therefore, notwithstanding the pendency of a Civil Suit it is quite open to a Magistrate to initiate a proceeding u/s 145, Cr. P.C. in appropriate cases. The Learned Advocate for the petitioner, however, strongly relies upon the decision of the Supreme Court in [Ram Sumer Puri Mahant Vs. State of U.P. and Others](#), in which Their Lordships reversing an Order of the High Court which refused to interfere against an Order directing initiation of proceedings u/s 145, Cr. P.C. held that such a proceeding was not justified when a Civil Litigation is pending for the property wherein the question of possession is involved and has been adjudicated because multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. This decision is clearly distinguishable because in that case an adjudication by the Civil Court was already made and the matter was pending in appeal. Their Lordships found initiation of a parallel criminal proceeding was not justified when a civil litigation was not only pending but had also been adjudicated. This adjudication makes all the difference and it is only in such circumstances that initiation of proceeding u/s 145, Cr. P.C. is discouraged as it is not conducive to the interest of the parties and would cause waste of public time. This decision of the Supreme Court is an Authority for the proposition that if a Civil Litigation is pending at the appellate stage initiation of a parallel proceeding u/s 145, Cr. P.C. is incompetent. But on the basis of this decision it cannot be successfully argued that if a Civil Suit is pending no proceeding u/s 145, Cr. P.C. should be drawn up. If the law was otherwise it would give a handle to a person wrongly committing a trespass; if the real owner in possession is dispossessed by a trespasser and thereafter a proceeding u/s 145, Cr. P.C. is drawn up, the trespasser can easily defeat it and protect his wrongful possession by filing a Civil Suit, getting the proceeding u/s 145, Cr. P.C. quashed and then withdrawing the Suit. In such circumstances the person dispossessed would be forced to bring another action in a Civil Court for recovery of possession. Thus, in such circumstances dropping of a proceeding u/s 145, Cr. P.C. instead of avoiding multiplicity of litigation would really lead to it. Therefore, the fact that the present petitioner has brought a Suit in a Civil Court over the same dispute is not a ground to quash the proceeding in question.

3. It appears that the same petitioner and another have made a revisional application being Criminal Revision 526 of 1988, to rescind or recall the Order passed by this Court in Criminal Revision No. 517 of 1988 referred to previously. This revisional application is also liable to be rejected as it is found that there is no merit in the application for quashing the proceeding u/s 145, Cr. P.C.

4. On the above premises both revisional applications are rejected. The Learned Magistrate is directed to dispose of the proceeding u/s 145, Cr. P.C. with utmost expedition.