

Suresh Kumar Vs. Vijay Kumar and Another

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Court : Delhi

Decided On : Mar-02-1987

Reported in : 1988CriLJ977; 1987(2)Crimes414; 31(1987)DLT318; 1987(13)DRJ5

Judge : M.K. Chawla, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 145 and 146

Appeal No. : Criminal Revn. No. 245 of 1986

Appellant : Suresh Kumar

Respondent : Vijay Kumar and Another

Advocate for Pet/Ap. : V.P. Kandpal and; Rajeev Behl, Advs

Judgement :

ORDER

1. In order to dispose of the present revision petition, this court is not required to go into the disputed questions of the fact. The bone of contention between the parties is the tenancy rights of shop No. 51AF, Kolhapur Road, Kamla Nagar, Delhi. Suresh Kumar Kohli claims himself to be the tenant of the disputed premises since 8-12-78. Inder Sain Kohli, the father of the petitioner asserts his rights of tenancy in the said shop. He is supported by his sons Vijay Kumar and Ashok Kumar.

2. As the dispute could not be resolved amicably, Inder Sain Kohli filed a suit in the Court of the Senior Sub-Judge for permanent injunction against the petitioner and another on or about 30-4-1983. Along with the said Suit, the plaintiff also moved an application under O. XXXIX, Rr. 1 and 2 C.P.C., praying for the grant of ex parte ad interim injunction restraining the petitioner and another from interfering in the peaceful possession of the shop. The ex parte ad interim injunction was granted by the lower Court. It was, however, later on vacated by Smt. Kamlesh Sabharwal, S.J.I.C. Delhi, on 14th May, 1986. Shri Inder Sain, however, immediately moved the District Judge and was able to secure the order of maintaining status quo qua the shop in dispute till the disposal of the appeal. This appeal is still pending and is being hotly contested by the petitioner.

3. Feeling helpless, Shri Suresh Kumar thought of and devised another method to take possession of the shop or in the alternative to deprive his father of his right to use the same. On 19-6-86, he moved an application under Section 145 of the Code of Criminal Procedure before the learned S.D.M. Shri Vijay Kumar and Shri Ashok Kumar were arrayed as the respondents. He did not include his father Inder Sain as a party presumably because of the pendency of civil litigation between the two. The learned S.D.M. called for the report from the S.H.O., Police Station Roshanara Road, and without affording the respondents an opportunity of being heard, directed by the S.H.O. to seal the premises under Section 145 Cr.P.C. This order was challenged and Shri S. N. Kapoor, Addl. Sessions Judge, Delhi, quashed the proceedings under Ss. 145/146 Cr.P.C. The S.H.O. concerned was directed to deliver the keys of the shop to the Addl. Senior Sub Judge, Delhi. The parties were directed to abide by the judgment of the Civil Court. It is against this order Shri Suresh Kumar has come up in revision challenging the correctness of the impugned order of Shri S. N. Kapoor dt. 29-10-1986.

4. The main contention of the learned counsel for the petitioner is that once the keys of the premises have been taken possession of by the Police from the petitioner, the same ought to have been returned to him. The learned lower Court should not have interfered in the subjective satisfaction of the Magistrate where there existed apprehension of breach of peace. None of these arguments are to the liking of the learned counsel for the respondents. His main grievance is that

the petitioner intentionally did not disclose the pendency of a civil litigation concerning this very premises and succeeded in getting the desired result. In order to achieve that object, he even did not make his father a party who was and in fact is the interested person in any proceedings concerning the disputed shop.

5. After hearing the learned counsel for the parties at length, I have no option but to reject the petitioner's contention for obvious reasons. It is an admitted case of the parties that civil litigation about the disputed premises is pending in the Court of the Addl. Senior Sub Judge, Delhi. Both the parties have been directed to maintain the status quo. At that time, the possession of the shop in dispute was with Inder Sain Kohli. This litigation is much prior in time than the initiation of proceedings under Ss. 145/146 of the Cr.P.C. by the petitioner. In that situation, the proceedings under Section 145/146 Cr.P.C. cannot be allowed to be invoked or allowed to continue. Once the parties have resorted to settle their respective claims in a Civil Court, the Magistrate has no longer any duty to perform. In such like situations, if the criminal courts are allowed to start parallel proceedings in respect of the same subject-matter, it will not only create complications but will also undermine the respect for the authority of the Civil Courts. The courts have gone to the extent of holding that when there is a choice between S. 145 and S. 107 of the Code before a Magistrate, by reason of the pendency of civil litigation, it seems to be perfectly obvious that he should choose S. 107 and not proceed with or continue the proceedings under Section 145 of the Code. It was so observed in the judgment reported as *Des Raj v. Satpal alias Satnam*, 1973 Chand LR (Cri) 223 : (1973 Cri LJ 1869) (P & H). This decision was accepted and confirmed in the cases reported as *Bhan Singh v. State of Punjab*, 1976 Chand LR (Cri) 85 (Punj & Har) and *Ramaswami Pillai v. Inspector of Police, Vellur Nammakkal Taluk, Salem District*, 1979 Mad LW (Cri) 130 and *Raghunath Kulaba Chawan v. Dattatraya Keshav Rao Chawan*, 1980 Bom CR 897.

6. Learned counsel for the petitioner in support of his proposition placed reliance and referred to a case reported as *R. H. Bhutani v. Miss M. J. Desai*, : 1969 CriLJ13 . The relevant portion of the judgment reads as under :-

'The satisfaction under sub-section (1) of S. 145 is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or 'from other information' which must include an application by the party dispossessed. The High Court is in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.'

7. On the basis of the said judgment, the submission is that the Court below should not have upset the satisfaction of the Magistrate which is final on facts and should have allowed the proceedings to go on. This contention prima facie has no legs to stand on. It may be that in the proceedings under Section 145/146 of the Code, the satisfaction of the Magistrate is final on facts but this finality is subject to his jurisdiction to move in the matter. The existence of an order of injunction of a Civil Court creates a complete bar to the passing of any order under Section 145/146 Cr.P.C. subsequently. The S.D.M. cannot be allowed to travel beyond the narrow compass of his powers under this provision vis-a-vis the orders of a competent Civil Court.

8. On this aspect, if by implication, there was any controversy, the same was laid at rest by the judgment of *Ram Sumer Puri Mahant v. State of U.P.*, : AIR 1985 SC472 while construing the effect of pendency of civil litigation at the time of initiation of proceedings under Section 145 Cr.P.C. it was observed as under :-

'When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceedings under Section 145 of the Code, would not be justified. The 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 orders 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.'

9. After this judgment, no scope is left with this Court to allow the parties or the learned to S.D.M. to continue the proceedings or pass any orders under Ss. 145/146 Cr.P.C. and if there exists any such order, then to nullify its effect, the court below, in my opinion, was justified in quashing the impugned orders of the learned S.D.M. The revision under these circumstances fails and is dismissed.

10. Before parting with this case, I am pained to observe that the learned appellate Court even though quashed the proceedings of the learned S.D.M. and in my opinion rightly so, but it went wrong in directing the S.H.O. concerned to deliver the keys of the shop to the Addl. Senior Sub-Judge, Delhi, to await the judgment of the Civil Court. Even though prima facie this order is not in consonance with the requirement of law laid down by the Supreme Court and discussed above, but I do not propose to make any further comments except to direct the court of the Addl. Senior Sub Judge to dispose of the misc. appeal at his earliest convenience preferably within three months from today so that the shop is put to use by its rightful occupant. A copy of this order be also sent to the Court of Addl. Senior Sub-Judge.

11. Ordered accordingly.