

Tirath Dass Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/694777

Court : Delhi

Decided On : Feb-17-1989

Reported in : ILR1989Delhi632; 1989RLR115

Judge : P.K. Bahri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 401

Appeal No. : Criminal Revision Appeal No. 181 of 1985

Appellant : Tirath Dass

Respondent : State and ors.

Advocate for Def. : Mr. Dinesh Mathur

Advocate for Pet/Ap. : S.K. Agarwal,; Meera Bhatia and; D.C. Mathur, Advs

Judgement :

P.K. Bahri, J.

(1) This criminal revision is directed against judgment dated October 4, 1985, of Shri V. S. Aggarwal, Additional Sessions Judge, Delhi, by which he had allowed the criminal revision filed by respondents-Joginder Lal and Smt. Taro Devi and had quashed the proceeding initiated under Section 145 of the Code of Criminal Procedure (for Short 'Cr. P.C.') and also the order by which the shop in question

had been attached under Section 146 Criminal Procedure Code .

(2) Facts leading to the filing of the present petition, in brief, are that the petitioner's father Atam Parkash was allottee of Shop No. 277, Old Lajpat Rai Market. Delhi. He was given possession of the same by the Rehabilitation Department on January 31, 1960. Atam Parkash had entered into a partnership with his son-in-law Pritam Dass on March 26, 1968 and a partnership business in the electronics and allied goods was carried on in the said shop. The said partnership was stated to be at will and the name of the partnership firm was M/s Raj Electronics and that partnership business continued till March 6, 1983, when Atam Parkash died. A new partnership was brought into existence between the petitioner and Pritam Dass vide partnership deed dated March 31, 1983. with effect from March 8, 1983. One of the terms of the partnership was that Pritam Dass shall have no right, interest or claim in respect of the shop in question and the petitioner alone would continue to be allottee of the shop in place of his father Atam Parkash. On June 30, 1985, Pritam Dass died. Pritam Dass had left behind his wife Taro. Devi and two sons, namely, Joginder Lal and Gulshan Rai.

(3) A petition under Section 145 Criminal Procedure Code . was filed by the petitioner Tirath Dass in which he impleaded the widow and the sons of Pritam Dass as respondents and he averred that with the death of Pritam Dass the partnership stood dissolved and the petitioner alone remained in possession of the shop in question. He also pleaded that in view of the terms of the partnership deed the petitioner alone has rights in the shop. It was averred in the petition that the shop remained closed on June 30, 1985 and when he opened the same on July 2, 1985 the respondents along with others tried to interfere with the possession of the petitioner in the said shop and they got even registered a case against the petitioner under Section 107 & 151 Cr. P.C. and after the petitioner was taken to the Police Station in the aforesaid case, the respondents put their own lock on the shop with the help of the police. The petitioner pleaded that whenever he had visited the shop later on, he was being threatened and insulted and abused by respondents 2 & 3 and thus there has arisen a dispute between the parties with regard to the possession of the shop which may result in breach of peace and so, he wanted the proceedings to be taken under Section 145 Criminal Procedure

Code . and prayed that he be given possession of the shop. He has narrated in the petition that he had also filed a civil suit seeking injunction against Joginder Lal and a temporary injunction was granted on April 4, 1985, restraining Joginder Lal from interfering or obstructing the petitioner from entering the shop for carrying on his normal business activities. He also mentioned that on getting this injunction, he tried to enter the shop but he was forcibly prevented and was assaulted upon and a case under Section 341. & 325 of the Indian Penal Code vide F.I.R. No. 294 of 1985 stood registered at Police Station Kotwali. He also mentioned that on July 29. 1985, he again went to the shop in order to see the account books as he was to file income-tax return but a quarrel was raised by respondent No. 2 who also held out threats to him and proceedings under Sections 107 & 151 Criminal Procedure Code . were initiated. However, it was clearly admitted in the petition that the petitioner had been dispossessed by the respondents on July 2, 1985.

(4) The learned S.D.M., on pursuing the complaint, initiated the proceeding under Section 145(1) Criminal Procedure Code . and also passed an order under Section 146 Criminal Procedure Code . The opposite party Joginder Lal and others filed a revision petition which has been allowed by Shri V S. Aggarwal. Additional Sessions Judge. on the sole ground that inasmuch as a civil suit had been brought prior to the filing of the petition under Section 145 Criminal Procedure Code . and as the same was pending and also as temporary injunction had been obtained in the said suit, the proceedings under Sections 145 & 146 Criminal Procedure Code . were not valid and thus he quashed the said proceedings.

(5) At the outset. I may mention that Mr. Dinesh Mathur, counsel for the respondents, admitted the fact that the temporary injunction order, which was obtained in the civil suit, had lapsed even before the complaint was filed by the petitioner under Section 145 Criminal Procedure Code ., so at the time the proceedings under Section 145 & 146 Criminal Procedure Code . were initiated by the S.D.M. there was no injunction order in force granted by the civil court. Thus, a question to be decided at first is whether the Additional Sessions Judge was right in quashing the proceedings before the S.D.M. on the ground that a civil suit was pending at the time the proceedings were initiated by the S.D.M.

(6) The learned Additional Sessions Judge has based his judgment on the observations made by the Supreme Court in *Ram Sumer Pun. Mahant v. State of U.P. & Others.* : AIR 1985 SC472 . In the said case, there was a suit for possession and injunction filed in the, civil Court where the question of title was gone into and by a judgment dated February 28, 1981, the said suit was dismissed. An appeal was still pending against that judgment and decree and in the meanwhile, the proceedings were initiated under Section 145 Criminal Procedure Code . The Supreme Court observed as follows :

'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 under Section 145 of Criminal Procedure Code .'

These significant observations of the Supreme Court were not taken notice of by the Additional Sessions Judge. The Additional-Sessions Judge only made reference to the observations made in this very judgment 'in the latter portion to the .following effect :

'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 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.'

(7) So, it is clear that the Supreme Court made these observations in peculiar facts of the said case where a civil court had already adjudicated upon the matter and given its decision and the matter was only pending in appeal and in such a situation it was held that the parallel criminal proceeding under Section 145 Criminal Procedure Code . should not continue. In the present case, at the time

the proceeding under Section 145 Cr. P.C. had been initiated, there was no order of the civil order in force with regard to the property in question. So. the proceeding under Section 145 Criminal Procedure Code . could not have been quashed only on the ground that a suit had been filed and was pending. A similar view has been taken by this Court in *Iqbal Singh v. The State & Another.* : 30(1986)DLT438 (2). In *Ashrafi Lal v. Labh Singh & Others* 1984 Cri. L.J. 1172(3), this Court considered the various judgments and particularly the judgment of the Supreme Court reported as *Sajjan Singh v. Sajjan Singh* 1970 U..T. (SC) 75(4) and it was observed by this Court that from purely practical point of view, it would be proper not to curb the jurisdiction and to leave the aggrieved party to knock at the doors of the civil courts to initiate proceedings for the disobedience. of the injunction order. It was held that jurisdiction under Section 145 Criminal Procedure Code . should be exercised with extreme caution if a civil court is properly seized of the matter and three types of orders were visualised which could be passed by the courts: (1) appointment of receiver to manage the properties in dispute, (ii) passing of interim injunction restraining one party from interfering with the possession of the other, and (iii) the maintenance of status quo about the possession. The Court opined that if receiver is appointed by civil court, then there is no reason to take resort to provisions of Section 145 Criminal Procedure Code . and where the injunction had been granted, the court upon a deeper consideration may, think that the jurisdiction of a criminal court should not be restricted because If the other party uses force to dispossess the person who has obtained the injunction, then a situation calling for proceedings under Section 145 Cr. P.C. w.d exercise of emergency powers is created and the magistrate will then step in because in that situation the magistrate would be acting in aid of the civil court. Then, it was visualised that if a person enters into wrongful or forcible possession and obtains an order from the civil court that he may not be dispossessed or that status quo may be maintained, then proceedings under Section 145 Cr. P.C. cannot be directed to be dropped because in that situation the person in wrongful possession can have his suit dismissed and thus, perpetuate his wrongful possession and in case only an order regarding status quo is passed, the situation can. deteriorate and proceedings can be initiated before the magistrate as there is every possibility of breach of peace occurring when both the parties may' claim to

be in possession. So, it depends upon facts of a particular case in order to see whether the parallel proceedings before the civil court as well as the criminal court should continue where the question of possession is involved. Broadly speaking, if in a civil suit an injunction has been obtained, may be at the initial stage or at the final stage, which makes it clear with regard to the question of possession then the parallel proceedings under Section 145 Criminal Procedure Code . are not to be continued. It is not necessary to go into the question as to whether the proceedings under Section 145 Criminal Procedure Code . should continue or not where a person takes forcible possession and then moves a civil court, and obtains an interim injunction against the opposite party because the facts of the present case do not call for any final decision by me on this point.

(8) In *Ghulam Mohi-ud-Din & Another v. Gani Joo & Others*. 1987(2) Crimes 839(5), a civil suit had been filed and an order had been obtained from a civil court requiring the parties to maintain, status quo. It was held by a Division Bench of Jammu & Kashmir High Court that proceedings under Section 145 Criminal Procedure Code . could not be quashed because such proceedings are always taken where there is apprehension of breach of peace and unless and until the civil court has passed an interim injunction or appointed receiver in unambiguous terms, which was in force at the time when the proceedings were initiated, the Magistrate under Section 145 Cr. P. C. will not cease to have jurisdiction. So, in the present case. the Additional Sessions Judge was not right in quashing the proceedings before the S.D.M. inasmuch as at the time proceedings. were initiated by the S.D.M. there was no adjudicated order of the civil court in force determining the question of possession. Hence, the order of the Additional Sessions Judge cannot be sustained. However, it is admitted fact in the petition filed under Section 145 Criminal Procedure Code . itself that the petitioner-Tirath Das was no longer in physical possession of the property in question. According to him, he was dispossessed illegally by the opposite party on a particular date. Hence, it was not a fit case where the S.D.M. should have passed any order under Section 146 Cr P.C. As held in *Rajinder Singh v. Abdul Majid & State*, (6), the question of actual physical possession of the property in question is to be determined in proceedings under Section 145 Criminal Procedure Code . i.e. which was the party who was in actual physical possession within two months preceding the initiation of the

proceedings under Section 145 Criminal Procedure Code . So, it was also held in that very case that the proceedings can continue under Section 107 Criminal Procedure Code . Along with proceedings under Section 145 Cr. P. C.

(9) The learned counsel for the respondents has vehemently argued that the facts of the case, as mentioned in the complaint indicate that the parties were at least in joint possession of the shop in question before the proceedings under Section 145 Cr. P.C. were initiated and thus, the proceedings under Section 145 Cr. P. C. cannot continue. Reference is made to *Maya Devi & Others v. Bhagat Singh Bedi*, : 22(1982)DLT443 (7.) where it has been laid down that where the parties are in joint possession of the property, the magistrate has no jurisdiction to initiate proceedings under Section 145(1) Criminal Procedure Code . However, the question whether the parties were in joint possession at the relevant time has not been gone into by the S.D.M. or by the Additional Sessions Judge. As yet the parties have to file their written statements before the S.D.M. and it is not possible for this Court to give any finding on the point whether the parties were in joint possession of the shop in question at any time or not; rather counsel for the respondents does not claim that it is the case of the respondents that the parties were in joint possession. According to counsel for the respondents, respondents have been in possession of the shop at all relevant times. I, thus, would not like to give any opinion on the disputed question of fact as to whether the parties were in joint possession or which of the party was in possession at the relevant time. That question has to be ultimately decided by the S.D.M. after recording evidence.

(10) Counsel for the respondents has also pointed out that the petitioner had already instituted a civil suit for getting possession of the shop which is pending in the High Court and thus, as there remains no apprehension of breach of peace the proceedings under Section 145 Criminal Procedure Code . should remain quashed. I do not agree. The S.D.M. has to determine the question of fact as to which of the parties was in possession at the relevant time and then pass necessary order restoring the possession of the shop to that party. Mere fact that a suit for possession has been filed based on the title by the petitioner does not take away his rights to get physical possession of the shop in proceedings under Section 145 Criminal Procedure Code . if he was to be able to establish that he

was in physical possession of the shop at the relevant time.

(11) I, hence, allow this petition partly and set aside the impugned judgment of the Additional Sessions Judge and restore the proceedings initiated under Section 145 Criminal Procedure Code . before the S.D.M. who shall decide the said proceedings in accordance with law, but I direct that the property shall not be attached under Section 146 Criminal Procedure Code . because it is admitted fact in the complaint made under Section 145 Criminal Procedure Code . that the respondents are in possession of the shop. The parties are directed to appear before the S.D.M. concerned for further proceedings on March 13, 1989. The record be sent back immediately.

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