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Manisha Devi Vs. Union of India

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Court : Delhi

Decided On : Aug-31-1994

Reported in : 1994IIIAD(Delhi)1491; 1994(3)Crimes402; 1994(31)DRJ98

Judge : Dalveer Bhandari, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 145

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 2246 of 1993

Appellant : Manisha Devi

Respondent : Union of India

Advocate for Pet/Ap. : O.P. Wadhwa and; N.L. Chaudhary, Advs

Judgement :

Dalveer Bhandari, J.

(1) This petition has been filed under Section 482 of the Cr.P.C. for quashing the proceedings under Section 145 Cr.P.C. pending before Mr. Virender Kumar, learned S.D.M., Punjabi Bagh, New Delhi.

(2) The petitioner has further prayed that the order dated 9th February, 1993 passed by the S.D.M. directing the petitioner to handover possession of the shop bearing number H-24, Main Market, Rajouri Garden, New Delhi under the name of

Middas Herbal Beauty Parlour be quashed.

(3) Respondent No.2 Ram Rattan Goel moved an application before the Deputy Commissioner, Delhi dated 3rd February, 1993 inter-alia, stating that he had opened a beauty parlour at Rajouri Garden where he, Along with the petitioner Manisha Devi used to sit. The exact words incorporated in the application reads as under:

'I opened a beauty parlour and we both used to sit in the beauty parlour at Rajouri Garden.'

(4) On the basis of complaint filed by respondent No.2, the S.H.O. of Police Station, Rajouri Garden, New Delhi sent the Kalandra to learned S.D.M., Punjabi Bagh to initiate the proceedings under the Code of Criminal Procedure Respondent No.2 Ram Rattan Goel also filed a com- plaint to the S.H.O. police station Rajouri Garden, New Delhi on 21st December, 1992. Learned S.D.M. has initiated the proceedings on 9th February, 1993 and ordered as under :

'THE report Kalandra u/s 145 Cr.P.C. regarding Herbal Beauty Parlour, H-24, Rajouri Garden, is under trial before Your Honourable Court. Kalandra under Section 107/150 Cr.P.C. of both the parties is pending S.D.M. (Moti Nagar) D.D.No. 15-B above is hereby sent to the court. There is tension between both the parties. D.D.No. 15-B dated 9.2.93 is hereby forwarded in the cour Pof S.D.M., Punjabi Bagh and in the court of S-E.M.,Moti Nagar, for necessary action. There is apprehension of breach of peace in this regard'

(5) Respondent No.2 Ram Rattan Goel filed a complaint dated 21st December, 1992. The said respondent also filed an application to the Deputy Commissioner, Delhi, Tis Hazari on 3rd February, 1992. In that application, respondent No.2 had mentioned that he opened a beauty parlour and he was sitting along waith the petitioner in that beauty parlour. The exact words incorporated in the said application are reproduced as under:

'THAT I opened a beauty parlour and we both used to sit in the beauty parlour at Rajouri Garden.'

(6) On the basis of the complaint an order under Section 145(1) of the Code of Criminal Procedure was passed by the learned Sub Divisional Magistrate, Punjabi Bagh, New Delhi, thereby he ordered sealing of the property and the S.H.O. of the Police Station, Rajouri Garden, was appointed Receiver of the property. Learned counsel for the petitioner has raised purely legal plea in this petition. Learned counsel subnets that even in the application it is mentioned that respondent No.2 is in possession of the said beauty parlour Along with the petitioner. In other words they are in joint possession of the property in dispute. He submitted that proceedings under Section 145(l) of the Code of Criminal Procedure cannot be initiated when the parties are in joint possession of the property in dispute. In the instant case, in the application submitted to the Deputy Commissioner, Respondent No.2 clearly stated that he used to sit in the beauty parlour Along with the petitioner, meaning thereby they are in joint possession of the property in dispute.

(7) Learned counsel for the petitioner to strengthen his arguments placed reliance on reported judgments of this Court, e.g., Smt.Maya Devi & Others v. Shri Bhagat Singh Bedi 1982 DRJ 402. In this case, the Court has held that when the parties are in joint possession of the property in dispute, the Magistrate has no jurisdiction to initiate proceedings under Section 145(1) of the Code of Criminal Procedure. He also placed reliance on another decision of Punjab and Haryana High Court in Dhanvir Singh Vs State of Punjab and Anr. 1983 RCR 538. In this case also a similar view was taken and the Court has held that dispute between the co-owners in possession of the property is not covered under Section 145 and 146 of the Code of Criminal Procedure.

(8) Learned counsel has also cited the judgment of Jammu and Kashmir High Court in Akbar Palla Vs Mst. Teja & Others 1986 (1) RCR 568. The Court has taken the view that the provisions of Section 145 of the Code of Criminal Procedure cannot be invoked when parties are in joint possession of the disputed property.

(9) In another judgment of Punjab and Haryana High Court,i.e' Chand Singh Vs Harnam Kaur alias Middo & State ofPunjab,1987 (2) RCR 448. The Court has held

that proceedings under Section 145 of the Code of Criminal Procedure are not maintainable when parties are in joint possession, of the property in dispute.

(10) Learned counsel appearing for the respondent has placed reliance on Babu Ram & Others Vs Sub Divisional Magistrate, Shahdara & Others : 43(1991)DLT514 . This case does not help respondent No.2. In this case the Court has held that the question of possession of the disputed property is not relevant Under Section 145 Cr.P.C. The Sub Divisional Magistrate has to decide in the proceedings under Section 145 and 146 Cr.P.C. is as to who was in the possession of the disputed property on the date of passing of the order or even two months prior to the said order. There is no dispute on the proposition of law because there is consistency in the interpretation given in all leading cases on this proposition of law.

(11) In view of the clear declaration of law by this Court and other High Courts that when parties are in joint possession of the property in dispute, the Magistrate has no jurisdiction to initiate proceeding under Section 145(1) of the Code of Criminal Procedure.

(12) The petition is allowed and pending proceedings and impugned order of learned Sub Divisional Magistrate are quashed.

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