

Sultan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-04-2006

Reported in : RLW2006(2)Raj885; 2006(4)WLC764

Judge : H.R. Panwar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 145, 145(1), 146, 307, 397, 397(2) and 401

Appeal No. : S.B. Criminal Revision Petition No. 233 of 2005

Appellant : Sultan Singh

Respondent : State of Rajasthan

Advocate for Def. : O.P. Rathi, Adv.

Advocate for Pet/Ap. : G.R. Punia, Adv.

Judgement :

H.R. Panwar, J.

1. Notice was served on the respondent No. 2 on 26.5.2005 and 27.5.2005, power was filed on behalf of the respondent No. 2 by Mr. Dharendra Singh and, thereafter the matter was adjourned on four occasions. Today, Mr. Dharendra Singh Rathore submits that he has no instruction to plead and argue the case for respondent No.

2.

2. This criminal revision under Section 307/401 of the Code of Criminal Procedure, 1973 (for short, 'the Code' hereinafter) is directed against the order dated 22.2.2005 passed by the Additional Sessions Judge, Bali, District Pali (for short, 'the Revisional Court' hereinafter) in Criminal Revision No. 37/1999, whereby the revision petition filed by the respondent No. 2 against the order dated 29.6.1999 passed by the Assistant Collector-cum-Executive Magistrate, Desuri (for short, 'the Executive Magistrate' hereinafter), was set aside and the proceedings initiated by the Executive Magistrate against the respondent No. 2 under Section 145 and 146 of the Code have been quashed. Aggrieved by the order impugned, the petitioner has filed the instant revision.

3. I have heard learned Counsel for the petitioner and the Public Prosecutor. Notice for final disposal was served on the respondent No. 2, but no one appears for him.

4. By the order dated 29.6.1999, show cause notices were issued by the Executive Magistrate to Party No. 1 i.e., the petitioner and party No. 2, i.e., the respondent No. 2 to show cause why the land in dispute be not attached by exercising the power under Section 146 of the code. The Executive Magistrate earlier came to the conclusion that prima facie there is apprehension of breach of peace between the parties relation to possession of the land in dispute and initiated proceedings under Section 145 of the code and drew preliminary order under Sub-section (1) of Section 145 of the Code.

5. It is contended by the learned Counsel for the petitioner that the order of the Executive Magistrate is an interlocutory order and, therefore, the revision petition was not maintainable before the Revisional Court. According to the learned Counsel, the Revisional court fell in error in entertaining and deciding the revision against the petitioner which was filed against an interlocutory order.

6. It is settled law that no revision is maintainable under Section 397 of the Code against an interlocutory order. In *Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd. and Ors.* 2001 Cr.L.R. 851 (SC), the Hon'ble Supreme Court held as

under:-

The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short 'the Code') is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner, who moved the superior Court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If it would, then the order is not interlocutory in spite of the fact it was passed during any interlocutory stage.

7. In *Adalat Prasad v. Rooplal Jindal* : (2004)7SCC338 , the Hon'ble Supreme Court held that issuing the process is an interlocutory order and no revision lies against such an order.

8. In this view of the matter, the e order cannot be sustained and liable to be set aside.

9. Consequently, the revision is allowed. The impugned order dated 22.2.2005 passed by the Revisional Court in Criminal Revision Petition No. 37/1999 is set aside and the order dated 29.6.1999 passed by the Executive Magistrate in Criminal Case No. 3/1999 is restored. The stay petition stands disposed of.

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