

Surinder Singh Vs. Inder Sain

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Court : Himachal Pradesh

Decided On : Jul-05-1974

Reported in : 1974CriLJ1361

Judge : D.B. Lal, J.

Appellant : Surinder Singh

Respondent : Inder Sain

Judgement :
ORDER

D.B. Lal, J.

1. This is a revision petition filed by Surinder Singh against the order dated February 28, 1974. of the learned Sessions Judge, Simla passed in a case under Section 107 of the Code of Criminal Procedure. The facts giving rise to the present revision petition are, that one Inder Sain filed a complaint before the Sub-Divisional Magistrate under Section 107 and the usual allegation was that there was apprehension of breach of peace from the direction of Surinder Singh, the present petitioner, and as such he should be bound over under that section to keep peace for a period settled by the Court. As required under law, the learned Magistrate being of opinion that there was sufficient ground for proceeding prepared a preliminary order and asked the petitioner Surinder Singh to show cause as to why he should not be ordered to execute a bond to keep peace and

not to disturb the public tranauillity. It appears, Surinder Singh filed some application before the Sub-Divisional Magistrate, alleging that no case was made out against him and hence the proceedings should be dropped. By his order dated December 22, 1973, the Sub-Divisional Magistrate did not drop the proceedings but proceeded to hear the parties under Section 117, Against that order Surinder Singh came in revision before the learned Sessions Judge, Simla. After considering the case on merit, the learned Sessions Judge has rejected the prayer of Surinder Singh. According to him the stage has vet to arrive under Section 117 and full opportunity will be given to Surinder Singh, to set out his defence. In case he makes out a case on merit in his favour, he is likely to be relieved of these proceedings. Be-ins dissatisfied with that order of the learned Sessions Judge, Surinder Singh has come up in a further revision before this Court,

2. At the outset, the learned Advocate-General submitted that the present revision petition having been filed on April 30. 1974, will not be enter-tainable, being prohibited under Section 397 of the new Code of Criminal Procedure, (1973). The learned Counsel appearing for the petitioner, however, referred to Section 384 of the new Code of Criminal Procedure and sought assistance thereunder. According to the learned Counsel the proceedings in revision should be considered to be in continuation of either the trial pending before the Magistrate or the first revision submitted to the Sessions Judge. I am afraid, the proposition advanced by the learned Counsel cannot be sustained under law. It would indeed be wrong to say that a proceeding in revision can be considered to be in continuation of the original proceeding from which it may arise. The learned Counsel referred to *Garikapati Veeraya v. N. Subhiah Choudhry* : [1957]1SCR488 . But the mandate that emerges from that decision, with great respect to their Lordships, is not applicable. Their Lordships were considering a certain appeal that was filed in continuation of a suit filed before the enforcement of the Constitution and in that connection observed that the legal remedy of appeal was really a step in the series of proceedings all connected by some intrinsic unity and could be regarded as one legal proceeding. In the present case we are dealing with a revision and not with an appeal. It can hardly be considered that a remedy by way of revision is inherent or embedded in any manner in the original proceeding instituted before a Magistrate. Therefore in my opinion the analogy cannot be drawn from a civil

remedy of appeal, as contradistinguished from a special remedy of criminal revision provided under the Code of Criminal Procedure. In a criminal revision there is not even a right reposed in the petitioner to be heard on merit. It is nonetheless a discretionary remedy to be granted or refused by the Court in the exigency of situation. Apart from this in the above noted decision their Lordships have themselves mentioned that the position would be different where the legislature itself had taken away expressly the remedy. In that contingency even the appeal would not be entertainable. If we peruse Sub-Section (3) of Section 397 of the present Code, we find that the remedy of a second revision is clearly barred therein. It is abundantly clear that the present revision petition has been instituted after the new Code had come into force. The submission of the learned Counsel that Section 384 will help him is also devoid of any merit. His case is not covered under the provisions of that section. It cannot be stated that the application for revision was pending immediately before the commencement of the new Code. Even in the above noted case relied upon by the learned Counsel the learned Judges never held that the appeal would be deemed pending on a date before the commencement of the Constitution. It is quite a different matter that according to their Lordships the appeal being a vested right was considered to be entertainable. Therefore, it is manifest under Section 397 of the new Code the present revision petition is not entertainable and must be dismissed on this short ground.

3. The learned Counsel submitted that there was a solitary instance of the petitioner having shown a revolver and threatened the complainant and that there was no apprehension of breach of peace. It is further stressed on behalf of the petitioner that if at all a complaint under Section 145 of the Old Code was maintainable as there was some land dispute. In reply to this argument it is stated that the respondent had already filed a complaint under Section 145 which he had withdrawn and that at present the civil suit is pending between the parties. All these circumstances would be taken due regard of by the learned trial Magistrate when he proceeds to hear the parties under Section 117 of the old Code of Criminal Procedure. At that time the petitioner will get the opportunity of telling the Magistrate that there is no longer any apprehension of the breach of peace and the proceedings should be dropped against him. This will hardly be a ground for

interference at this stage.

4. In the last the learned Counsel submitted that the present petition be considered as one under Section 561-A of the old Code as according to him some abuse of process of the Court has resulted. This appears to be a cry in despair as no ground is made out for exercising inherent power of the High Court. There is decidedly a remedy available to the petitioner and he should avail of that remedy.

5. With these observations. I am of opinion that firstly the revision is not maintainable under law and, secondly, no exception can be taken to the order made by the learned Sessions Judge. The present petition is, therefore dismissed.

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