

**Khizar Bhat Vs. State**

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**Court :** Jammu and Kashmir

**Decided On :** Jun-14-1971

**Reported in :** 1972CriLJ125

**Judge :** Mian Jalaluddin, J.

**Appellant :** Khizar Bhat

**Respondent :** State

**Advocate for Def. :** Mr. K. N. Raina

**Advocate for Pet/Ap. :** Shri. T. R. Bhasin

**Judgement :**

ORDER

**Mian Jalaluddin, J.**

1. This revision arises out of proceedings initiated under Section 145. Criminal Procedure Code by the Chief Judicial Magistrate, Srinagar in case State v. Khizar Bhat.

2. On an application made by Peer Abdul Ahad Shah and on the basis of the police report that there was a dispute between Pir Abdul Ahad Shah (hereinafter called 'the first party') and Khazir Bhat and others (hereinafter called 'the second party') with regard to the possession over a plot of land No. 9-A situate at Batmalu

Srinagar and that there existed great apprehension of breach of peace, the Chief Judicial Magistrate drew up the preliminary order under Section 145, Criminal Procedure Code and called upon the respective parties to put in their written statements, documents and affidavits with regard to the factum of actual possession of the disputed land. The Magistrate also thought it as a case of emergency and therefore attached the subject matter of dispute. On consideration of the respective documents and affidavits on the record the learned Magistrate came to the conclusion that it was the first party which was in possession of the disputed land on the date of the preliminary order. He, therefore, declared the first party to be entitled to possession of the disputed land unless evicted therefrom in due course of law. The Magistrate also ordered the release of the attached property in favour of the first party. Against this order the second Party went up in revision before the Session Judge Srinagar who also in his elaborate order upheld the finding of the trial Magistrate and dismissed the revision petition. The second party has now come up in further revision before this Court.

3. Shri T. R. Bhasin learned Counsel for the petitioner did not deal with the factual aspect of the case relating to the finding of fact arrived at by the courts below, he has however assailed the impugned orders of the Chief Judicial Magistrate and of the learned Session Judge on various grounds. He at the initial stage of the arguments called in question the power and competence of the Sessions Judge to have himself finally disposed of the revision petition. The point which he debated in the first instance and, of course, which he did not very much press at the resumed hearing of the case was that under Section 439, Criminal Procedure Code it was incumbent upon the Sessions Judge to have made a reference to the High Court even though he was of the opinion that the revision merited dismissal. Therefore the order under revision was bad in law. That both the trial Magistrate and the first revisional court had omitted to consider the implication of the interim order of civil court relating to the maintenance of status quo with respect to the subject matter of dispute. Mere pendency of a civil suit between the parties, it is conceded, did not oust the jurisdiction of the Magistrate to proceed under Section 145, Criminal Procedure Code but nevertheless Judicial propriety demanded to give due recognition to this order. In other words, the argument is when there is a civil suit pending between the parties in regard to the same subject matter which is

involved in proceedings under Section 145 of the Criminal Procedure Code then the propriety which has ripened into rule of law is that the criminal court must stay its hands and should show respect to an interim or final order passed by the civil court in the civil case. Reliance is placed on the interim order of the civil court dated 13-12-1969 and the contents of the notice dated 13-8-1969 meant for the first party. Reliance is also placed upon the observations made by their Lordships of Mysore and Madhya Pradesh High Courts reported in AIR 1961 Mvs 203 and : AIR 1965 MP142 . It is further submitted that the learned Session Judge did not fully appreciate and record the points that were debated before him on behalf of the petitioner.

4. Mr. K. N. Raina counsel for the respondent has, on the other hand, tried to repudiate the argument of the petitioner by enunciating the proposition that the jurisdiction of the Magistrate to proceed under Section 145, Criminal P. C. is not affected by the mere pendency of a-civil suit between the parties. Nor is his jurisdiction ousted simply because se suit about the subject matter is already pending before a civil forum. There was no interim order passed by the civil court in favour of the second party that would have the effect of declaring him in possession. The only order passed by the Civil Court was regarding the maintenance of status quo which could by no stretch of imagination be construed in favour of the second party. Moreover this aspect of the matter should have been taken at the earlier stage by the second party before the competent forum. As this was not pressed therefore it is too late in the day for the first party to agitate this point and ask the court to rescind the order passed under Section 145. Criminal Procedure Code and stay its hands.

5. As regards the first contention relating to the competence of the Sessions Judge to dispose of the revision without. making a reference to the High Court I see no force in this argument. Section 435. Criminal Procedure Code provides that a Sessions Judge...may call for and examine the record of any proceeding before any inferior criminal court situate within his local jurisdiction for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court....Under Section 438 the revising authority may if it thinks fit

on examining the record under Section 435, Criminal Procedure Code of any proceeding, report for the orders of the High Court the result of such examination. It is clear from the section itself that it is only in cases where the revising authority empowered to act under Section 435. Criminal Procedure Code is of opinion that an order passed by an inferior criminal court is incorrect, illegal and improper that it has to make a reference to the High Court and not otherwise. If the learned Sessions Judge in the present case has come to the conclusion that the order under revision was in accordance with law and there was no need for any interference by him then it was hardly a case which he could refer to the High Court under Section 438. The argument of the learned Counsel for the petitioner in my opinion is, therefore, misconceived and it does not enunciate the correct view on the subject. The contention is, therefore, overruled.

6. As regards the second contention that there was an interim order of the civil court in favour of the second party and therefore the criminal court should have, while giving due respect and recognition to this order, stayed proceedings under Section 145 Criminal Procedure Code. I am of the view that this argument is hardly available to the petitioner in the present context of the case. There can be no dispute with the view enunciated by the learned Counsel for the petitioner which also receives support from the judgment reported in AIR 1960 Mys 203 that where there is a recent decision of a competent civil court by which the question of possession as between the contending parties has been decided or even for the purpose of giving an interim relief to that party then the Magistrate acting under Section 145. Criminal Procedure Code should not sit in judgment over that decision. On the other hand he should follow the same and show due respect to it. That the observance of this rule is in accordance with judicial propriety which has now ripened into a question of law. But the question posed before us is as to whether there is any interim decision of the civil court declaring the possession of the first or the second party in the case. Reliance is placed upon the order of the maintenance of status quo in the civil case. The second party wants this order to be construed in its favour by asking the court to hold that it is that party which has been declared to be in possession of the disputed land. But I am unable to accept this construction. The civil court has itself interpreted this order by observing that status quo meant nothing more than the position obtaining at the time of the

institution of the suit. What that position was has not been defined. This order is vaguely worded and does not admit of any such categorical interpretation favourable to the second party. It cannot be read in between the lines that there was an interim order declaring the possession of either of the contending parties at the time of the institution of the civil suit.

7. Again, the notice dated 13-8-1969 purporting to restrain the first party from interfering with the possession of the second party does not receive any sustenance from any of the judicial orders on the record.

8. Even if we agree for the sake of argument with the petitioner that the order of status quo should be construed to convey something favourable for the second party the question that still Doses itself is; can this point be urged now at a belated stage when the two courts have finally disposed of the proceedings under Section 145 and declared the possession of the first party on the land? If there were any force in the argument of the petitioner the same in my opinion should have been addressed at the earliest possible opportunity before the court of first in stance and if the petitioner did not succeed there he should have come in revision against that before a higher forum at the appropriate time. Having allowed the court to continue these proceeding against it and having allowed the Magistrate to pass the final order in the case it is doubtful if the second party can advance this plea at this stage.

9. Again, it is to be borne in mind that the jurisdiction of the Magistrate to proceed under Section 145. Criminal Procedure Code is founded upon his satisfaction of the existence of the conditions that enable him to proceed under Section 145. When the preliminary order is drawn up and the Magistrate proceeds with the case he calls upon the respective parties to file their objections with respect to actual possession of the subject matter of dispute. He has. in these circumstances, to bring the proceedings to their logical end. That is the view held by this Court in a number of cases of which reference has been made by the learned Sessions Judge in his order.

10. For the foregoing reasons I see no force in this revision petition which is hereby dismissed.

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