
has actually undergone 14 years actual imprisonment. This would include the under-trial period and the period undergone through investigation, enquiry and trial also. If the petitioner has already undergone 14 years imprisonment, his case would be reviewed in accordance with the instructions for release and findings above.

R.N.R.

Before R.L. Anand, J.

JASWANT SINGH & ANOTHER,—Petitioners

versus

STATE OF PUNJAB & ANOTHER,—Respondents

CrI. R. 532 of 96

20th May, 1997

Code of Criminal Procedure, 1973—Ss. 145 & 146—Code of Civil Procedure, 1908—S. 9, Order 39 rules 1, 2 & 2-A—Pendency of Civil proceedings does not bar Executive Magistrate to exercise power under S. 146(1) Cr. P.C.—In absence of firm findings after adjudication by Civil Court regarding possession over land in dispute resort can be had to S. 145 Cr. P.C. in emergent situations in order to avoid breach of peace—Ex-parte interim injunction does not amount adjudication—Order of 'status quo' by Civil Court on application under order 39 rules 1 & 2, also does not amount to adjudication of rights of parties—Object of S. 145 Cr. P.C., stated—Meaning of 'Status Quo' explained.

Held that this Court understands the meaning of 'status quo' as that it does not adjudicate the rights of the parties finally. By passing such types of orders, i.e. 'Status Quo', the Civil Court only gives directions to the parties to lead evidence further so that their ultimate right of possession is established. In my opinion, the 'status quo' order is no order in the eyes of law as the matter regarding possession is left open by the Civil Court, which at the relevant time was not in a position to adjudicate one way or the other regarding the factum of possession. The object of the proceedings under Section 145 Cr. P.C., is totally different, that is, to maintain peace and tranquility with respect to the immoveable property till the rights of the parties are either adjudicated by the Executives Magistrate under Section 145 Cr. P.C. or by a Civil Court.

(Para 6)

Further held, that if the learned Executive Magistrate after applying his judicial mind comes to the conclusion while dealing with the proceedings under Section 145 Cr. P.C. that there is an emergency with regard to the breach of peace, he could attach the property and in this case the provisions under Section 146 Cr. P.C. have been rightly invoked by the Executive Magistrate. The entire fallacy lies on the part of the revisional Court is that it has taken into its head that when the Civil Court proceedings are pending, the criminal proceedings under Section 145 Cr. P.C., cannot be started at any point of time. This is not a correct approach.

(Para 7)

Further held, that the Magisterial authority is quicker and has more effective sanction behind the orders passed under section 145, Criminal Procedure Code, for avoiding the breach of peace or recurrence of such breaches, as compared with the powers of the civil Court under order XXXIX rule 2(3), Civil Procedure Code. The findings recorded or the decision returned by a Magistrate in such cases is, of course, subject to the decision of the Court, as the rights of the parties to possession are not decided in proceedings under section 145 Cr. P.C. The mere pendency of the civil suit about the same subject matter between the same parties or the orders of the Civil Court of the type discussed about do not restrain the criminal Court from exercising jurisdiction under section 145 Cr. P.C.

(Para 7)

Viney Mittal, Sr. Advocate (Arvind Mittal,
Advocate, with him). *for the petitioner*
Arun Sanghi, Advocate, *for the respondent*

ORDER

R.L. ANAND, J.

1. Present is a revision filed by Sukhwant Singh and Jaswant Singh and it has been directed against the order dated 10th July, 1996 passed by the Court of Additional Sessions Judge, Patiala, who accepted the revision petition filed by Amarjit Singh and set aside the order dated 24th/27th November, 1995 passed by the Executive Magistrate, Patiala, who while taking the cognizance of the proceedings under section 145 Cr. P.C., came to the conclusion that there existed breach of peace. The Executive Magistrate invoked the emergent provisions under Section 146(1), Cr. P.C., and

appointed the Naib Tehsildar as Official Receiver of the land in dispute. The proceedings started on police report filed under Section 145, Cr. P.C. The Executive Magistrate *vide* order dated 24th/27th November, 1995 came to the conclusion that there was likelihood of the breach of peace with respect to the land comprised in Khasra No. 38 Min. measuring 3 killas 13 Marlas situated in village Sahnipur, Sub-Tehsil Dudhan Sadhan, District Patiala, and sensing the breach of peace and by invoking the emergent provisions he appointed the naib Tehsildar, Dudhan Sadhan as a receiver to maintain the suit land, Directions were also given to the Receiver to auction the land and deposit the amount in the Government Treasury. This revision petition I am disposing of with the assistance rendered by Shri Vinay Mittal, Senior Advocate, appearing on behalf of the petitioners, and Shri Arun Sanghi, Advocate, appearing on behalf of the respondents.

2. This Court is of the considered opinion that the impugned order passed by the learned. Additional Sessions Judge, Patiala, cannot be sustained in the eyes of law. Before I proceed further I would like to reproduce para No. 2 of the impugned judgement of Shri C.P. Goel, Additional Sessions Judge, Patiala :—

“2. I have heard the ld. counsel for the parties and have gone through the case. The ld. counsel for the revision petitioner has assailed the order of the ld. Executive Magistrate on the following grounds :—

1. The order passed by the Executive magistrate is vague as no dimensions or boundaries of the property have been given by the Police or the ld. Magistrate, on which the Receiver was going to be appointed;
2. There was a civil litigation pending between the parties and stay had been granted to the revision-petitioner before filling of the calendra under section 145 Cr. P.C. and as such the criminal proceedings could not be initiated.
3. The impugned order was passed without hearing the counsel for the parties and without considering the documents filed by the petitioner in a hasty manner.”

3. After hearing both the sides and going through the record of the case, I find force in the arguments of the ld. counsel for the Revision Petitioner. The impugned order dated 24th November, 1995

passed by the Executive Magistrate goes to show that the description of boundaries of the area measuring 3 Kanals 13 Marlas have not been given in this order. Similarly, the order under section 146 Cr. P.C. issued on the basis of this order, also goes to show that the boundaries or the other description regarding this area has not been given for that reason the order is vague. It is also not disputed that a civil litigation is pending between the parties. The Revision petitioner Amarjit Singh has filed a suit against party no. 1 which is pending before the Sub-Judge Ist Class, Patiala, and in that case, stay has already been granted before the start of the proceedings under section 145 Cr. P.C. It is further alleged that the land measuring 24 Kanals 14 Marlas was allotted to Lakshmi Devi and others and the petitioner is their attorney. Assa Bai and other predecessor-in-interest of party No. 1 challenged the allotment of Lakshmi Devi before the Hon'ble High Court but their petition was dismissed. Suit filed by them was also withdrawn later on. The learned counsel for the revision petitioner has cited *Ram Sumair Puri Mahant v. State of U.P. and others* (1), in this case the Hon'ble Supreme Court has held as under :

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceedings under S. 145 of the Code, would not be justified. The parallel proceedings should not be permitted to continue and in 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 a receiver for adequate protection of the property during the 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. Decision of Allahabad High Court — Reversed (Para 2).”

This ruling is fully applicable to the facts of the present case and when civil litigation is pending between the parties, the order of attachment under section 146 Cr. P.C. passed by Executive Magistrate, Patiala cannot be upheld. Thirdly the perusal of the interim order dated 24th December, 1995 goes to show that it was

passed in the absence of the counsel for the petitioner. The petitioner had requested that a date should be given, as his counsel was not present but without hearing the counsel and without perusing the documents filed by the petitioner, the order was passed in a hasty manner and as such for the reasons given above, I accordingly hold that the impugned order dated 24th November, 1995 suffers from apparent defect and cannot be sustained. As such accordingly set aside and the revision petition is accepted. The file of the revision petition be consigned. File of the trial court be sent back."

4. Learned counsel for the petitioners submitted that the revisional Court had proceeded on wrong assumptions by treating as if there is a finding of the Civil Court/adjudication of the Civil Court in favour of the respondents. The learned Counsel submitted that mere pendency of the civil suit on the date of the passing of the preliminary order dated 24th/27th November, 1995 under Section 146. Cr. P.C., does not debar the Police Officer or the Executive Magistrate to take cognizance under Section 145. Cr. P.C.

5. Refuting the argument of his legal adversary, Shri Arun Sanghi, learned counsel appearing for the respondents, submitted that the proceedings under Section 145, Cr. P.C., started on 20th Feb., 1995. The order under section 145(1), Cr. P.C., was passed on 2nd August, 1995, and on the date of the passing of the preliminary order, there is a finding with regard to the possession over the suit land in favour of Amarjit Singh respondent. To substantiate his argument, learned counsel for the respondents invited my attention to the copy of the order dated 1st June, 1995 passed in the civil suit titled *Lakshmi Devi v Jaswant Singh*. The counsel submitted that the suit had been filed through Shri Amarjit Singh respondent, in which it was held that the plaintiffs of the suit referred to above were in possession of the suit land and the investigation proceedings under section 145, Cr. P.C., were unwarranted, and naturally the order under Section 146(1), Cr. P.C. Learned counsel Shri Sanghi also relied upon an order dated 7th April, 1995 passed by a Division Bench of this Court in C.W.P. No. 5370 of 1995 (*Smt. Assi Bai & others v. State of Punjab and others*).

6. After considering the rival contentions of the parties and after going through the record and the documents relied upon by the parties, this Court is of the considered opinion that the learned

revisional Court committed grave irregularity and patent illegality in setting aside the order passed by the Executive Magistrate under Section 146 of the Code of Criminal Procedure. The trump argument of the learned counsel for the respondents in the present case is that when the preliminary civil proceedings were pending on the date of the filing of the proceedings under Section 145, Cr.P.C., initiation of the proceedings by the Police by invoking the provisions under Section 145, Cr.P.C., were a misuse. The second argument of the learned counsel for the respondents was that in view of the order dated 1st June, 1995, there was no difficulty on the part of the revisional Court to set aside the order under Section 146, Cr.P.C. The submissions raised by the learned counsel for the respondents are totally devoid of any merit because I find that there was no firm finding or adjudication regarding possession over the land in dispute in favour of the respondents on the date of the filing of the proceedings under Section 145, Cr.P.C. The order dated 1st June, 1995, relied upon by the learned counsel for the respondents, only indicates that in the civil suit the Civil Court granted *ex parte* interim injunction in favour of the plaintiffs against Shri Jaswant Singh and others, but there was no adjudication by this order. Rather, this application under Order 39, Rules 1 and 2, C.P.C., was finally disposed of *vide* order dated 25th January, 1996 and the earlier order dated 1st June, 1995 was modified and a string of the said order, if any, has been taken out by the Civil Court itself in the order dated 25th January, 1996, when both the parties to the suit were directed to maintain *status quo*. This court understands the meaning of '*status quo*' as that it does not adjudicate the rights of the parties finally. By passing such types of orders, i.e., '*Status Quo*', the civil court only gives directions to the parties to lead evidence further so that their ultimate right of possession is established. In my opinion, the '*status quo*' order is no order in the eyes of law as the matter regarding possession is left open by the Civil court, which at the relevant time was not in a position to adjudicate one way or the other regarding the factum of possession. The object of the proceedings under Section 145, Cr.P.C., is totally different, that is, to maintain peace and tranquility with respect to the immovable property till the rights of the parties are either adjudicated by the Executive Magistrate under Section 145, Cr.P.C., or by a Civil Court. A glance to the Code of Criminal Procedure would show that Section 145 has been introduced in the Chapter under the heading '*Urgent Cases of Nuisance or Apprehended Danger*' Right of possession and the question of possession are two different things. In the proceedings under

Section 145, Cr. P.C., limited question is always supposed to be discussed by the Executive Magistrate. The question of possession on the date of the passing of the preliminary order and two months earlier to that and if the Executive Magistrate is not in a position to adjudicate this aspect of the case, he has the power under Section 146, Cr. P.C., to invoke the emergent provisions and attach the property provisionally and call upon the parties to lead evidence or the parties can be left open to go to the Civil Court for the adjudication of their rights.

7. I have observed above that the order dated 25th January, 1996, only defines the *status quo* rights of the parties. If the learned Executive Magistrate after applying his judicial mind comes to the conclusion while dealing with the proceedings under Section 145, Cr. P.C., that there is an emergency with regard to the breach of peace, he could attach the property and in this case the provisions under Section 146, Cr. P.C., have been rightly invoked by the Executive Magistrate. The entire fallacy lies on the part of the revisional Court is that it has taken into its head that when the Civil Court proceedings are pending, the criminal proceedings under Section 145, Cr. P.C., cannot be started at any point of time. This is not a correct approach. The view which I have adopted in the present order is in consonance with the view of the Division Bench in the case reported as *Mohinder Singh v. Shri Dilbagh Rai* (2), and also with the view of the learned Single Judge in the case reported as *Om Parkash v. State of Haryana and others* (3). In *Mohinder Singh's* case (*supra*) it was held by the Division Bench as follows :—

“6. Section 145. Criminal Procedure Code, is a beneficial section enacted with the express object of preserving the peace. For the attainment of this object emergency provision for attaching the subject-matter of dispute has been provided in it. Under this section the criminal Court can only pass a temporary order and the rights of the parties in fact are to be settled by the Civil Courts.

7. In such cases involving the disputes of possession in my view, three types of orders can be envisaged to be passed by the Civil Courts; (i) the appointment of receiver to manage the properties in dispute; (ii) the restraining of one of the parties from interfering with the possession of that other party during the

2. 1976 PLR 803.

3. 1996(1) RCR 732.

pendency of the suit; about which the civil Court *prima facie* feels satisfied and (iii) the maintenance of *status quo* about the possession of the property during the pendency of the case.

10. The third type of cases, that is, maintenance of *status quo* during the pendency of the civil suit is a situation in which a civil Court does not *prima facie* feel satisfied about any party being in possession of the subject-matter of the suit. In such cases when both parties claim possession, dangerous situation can develop with the anxiety of both or any one of them to get into actual possession. If the situation deteriorates then the police or the Magistrate cannot act as silent spectators to witness the breach of the peace. If they act in such circumstances and the Magistrate attaches the subject matter of the dispute under section 145, Criminal Procedure Code, then he would be acting to defend the maintenance of *status quo* as ordered by the Civil Court.

11. Such situations are not purely hypothetical or conjectural but do occasionally arise in the Courts. The position, that the Magistrate under section 145, Criminal Procedure Code, cannot continue with the proceedings when the civil Court is seized of the case or passes injunction order referred to above, if accepted, can lead not only to breach of the peace but also to disrespect to the orders and the process of the Civil Courts. M.R. Sharma, J., sitting singly, giving a dissenting view to the above referred to case, in Criminal Misc. No. 728-M of 1975 *Bir Singh v. State of Haryana*, decided on 15th July, 1976, on similar facts referring to Teja Singh's case (*supra*) observed :—

“There is no quarrel with the aforementioned proposition of law but in a matter like this no hard and fast rule can be laid down. Sometimes during the pendency of a civil suit and during the continuance of an order of injunction passed by a civil court the parties do violate the peace and try to take forcible possession of the land from one another. In such a situation the police or the weaker party would not be absolutely debarred from initiating proceedings under section 145 of the Code of Criminal Procedure.”

A Magistrate acting under section 145, Code of Criminal procedure, is called upon to decide a question of possession, the nature and period of which is limited by this section. The Magisterial authority is quicker and has more effective sanction behind the orders

passed under section 145, Criminal Procedure Code, for avoiding the branch of peace or recurrence of such breaches, as compared with the powers of the Civil Court under order XXXIX, rule 2(3) Civil Procedure Code. The finding recorded or the decision returned by a Magistrate in such cases is, of course, subject to the decision of the Court, as the rights of the parties to possession are not decided in proceedings under section 145, Criminal Procedure Code. The mere pendency of the civil suit about the same subject matter between the same parties or the orders of the Civil Court of the type discussed above do not restrain the criminal Court from exercising jurisdiction under section 145, Criminal procedure Code. Their Lordships of the Supreme Court in *B.H. Bhutani v. Miss Man J. Desai* (4), approving the decision of the Bombay High Court in *Jiba v. Chandulal* (5), observed (para 14) :

“In A.I.R. 1926 Bom. 91 (supra) the High Court of Bombay held that it would be unfair to allow the other party the advantages of his forcible and wrongful possession and the fact that time has elapsed since such dispossession and that the dispossessor has since then been in possession or has filed a suit for a declaration of title and for injunction restraining disturbance of his possession is no ground for the Magistrate to refuse to pass an order for restoration of possession once he is satisfied that the dispossessed party was in actual or deemed possession under the second proviso.”

In *Sajjan Singh's* case (supra) the facts were that the parties had more than two rounds of civil litigation about a house. Once of the parties filed a suit for permanent injunction against the other party and obtained an injunction that his possession be not disturbed. He moved the Sub-Divisional Magistrate for the stay of the proceedings under section 145, Criminal Procedure Code, and also produced the injunction order. The Sub-Divisional Magistrate dismissed the application. The High Court upheld the order of the attachment as well

4. AIR 1968 SC 1944.

5. AIR 1926 Bombay 91.

as the appointment of the receiver made by the Sub-Divisional Magistrate. In appeal to the Supreme Court the order of the High Court was questioned. The Supreme Court upheld the order of the High Court and observed :—

“In our opinion this case must go back to the sub-Divisional Magistrate for decision of the proceedings before him. Those proceedings commenced as far back as 1967 and the question whether there is or there is not any apprehension of breach of peace will certainly have to be decided in the light of the happenings in the Civil Court. In the meantime we do not see any reason to order the setting aside of the order of the High Court. It will be open to the Sub-Divisional Magistrate to consider whether the Receiver should be continued or not, but in any event, he shall not disturb the possession of Sajjan Singh, son of Jagan Nath Singh so long as the temporary injunction is outstanding and pending the decision of the proceedings under section 145 of the Code of Criminal Procedure with a view to handing over the possession to the other side.”

The ratio of both these judgements of the Supreme Court is that the pendency of the same matter between the same parties in Civil Court does not mean the ouster of the jurisdiction of the Executive Magistrate under section 145, Criminal Procedure Code, in spite of the stay orders. A perusal of the judgements of the above referred to six cases shows that “*R.H. Bhutani* and *Sajjan Singh's* cases” were not brought to the notice of the Hon'ble Judges deciding those cases. Had these cases been brought to their notice, I am sure, the view taken by the Hon'ble Judges would have been differ. With due respect to the Hon'ble Judge deciding the above referred to cases their view cannot be preferred to the view of the Supreme Court in *Sajjan Singh's* (supra).”

This very case law was relied upon by Justice Jhanji in *Om Parkash v. State of Haryana and others* (6).

8. Learned Counsel for the respondents has relied upon *Balwant Singh v. State of Punjab and Anr.* (7),—a judgment of Hon'ble Single Judge of this Court. With great humility and respect to his Lordship, in the face of the Division Bench decision of this Court, it will be difficult for me to follow the verdict of his Lordship. The learned counsel for the respondents also relied upon a judgment of the Hon'ble Supreme Court reported as *Ram Sumer Puri Mahant v. State of U.P. and others* (8), and he submitted that during the pendency of the civil litigation the criminal proceedings under Section 145, Cr. P.C., cannot proceed and have to be dropped. This authority, in my opinion, rather goes against the respondents. The Hon'ble Supreme Court in this judgment has held 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 the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the Criminal Courts in a matter like the one before us.”

The above quoted lines would indicate and strengthen my view that once there is an adjudication with regard to possession one way or the other, in order to defeat that adjudication, the proceedings under Section 145, Cr. P.C., could not and should not be allowed. Present is a case where there is no adjudication in favour of the respondents. Learned counsel for the respondents has relied upon the order dated 1st June, 1995, which has already been modified in the order dated 25th January, 1996. The rights of the parties *vide* these orders are in a fluid stage and it cannot be said that the respondents were having a decree in their arms to defeat the claim of the petitioners. Learned counsel for the respondents has also relied upon *Sohrab Khan v. Abdul Rahim & Ors.* (9). The view of this case law again can be distinguished for the reasons which I have already mentioned above while following the Division Bench pronouncement of this Court. Even the order dated 7th April, 1995 passed by a Division Bench of this Court in C.W.P. No. 5370 of 1995 (*Smt. Assi Bai v. State of Punjab*) cannot be read for advantage to the learned counsel appearing on behalf of the respondents. In this writ petition there was no adjudication

7. 1995(1) C.C. Cases 536.

8. AIR 1985 S.C. 472.

9. 1994(1) C.C. Cases (P&H) 651.

with regard to the possession. The prayer made by the petitioners of the writ petition was with regard to the cancellation of the allotment of certain land. The controversy was totally beyond the issue, which is involved in the present revision petition.

9. Resultantly, I reverse the findings of the revisional court and allow this revision petition and restore the order under Section 146, Cr. P.C., passed by the Executive Magistrate. Now the property will remain under attachment and the Naib-Tehsildar/Receiver will be deemed to have been in possession of the property in pursuance of the attachment order and he will be competent to auction the same from time to time. All the auctions made by the Receiver shall be deemed to be valid. It has been informed to this Court by the learned counsel appearing on behalf of the respondents that at present the land is in possession of the lessees, who have been declared as the highest bidders by the Receiver. The possession of such lessees or anybody else, whosoever, has got the land from the Receiver, will not be disturbed.

The revision petition is allowed as indicated above.

R.N.R.

Before G.S. Singhvi & M.L. Singhal, JJ.

G.S. OBEROI,—Petitioner

versus

THE STATE OF PUNJAB & ANOTHER,—Respondents

C.W.P. No. 6943 of 1996

7th July, 1997

Constitution of India, 1950— Arts. 226/227—Water (Prevention and Control of Pollution) Act, 1974—Ss. —61 & 62—Air (Prevention and Control of Pollution) Act, 1981—S. 47—Supersession of Punjab Pollution Control Board vide Government Notification—Notification issued without notice or opportunity of hearing being afforded—Validity of Notification.

Held that Section 62 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 47 of the Air (Prevention and Control of Pollution) Act, 1981, which are almost identical empower the State Government to supersede the State Board. Section 62(1)(a) of 1974 Act and Section 47(1)(a) of 1981 Act vest power in the