

Before : H. S. Rai, J.

JAGDISH RAM,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Criminal Revision No. 258 of 1986

May 25, 1989.

*Criminal Procedure Code (II of 1974)—S. 145—Scope of—Injunction issued by Civil Court in favour of petitioner—Petitioner not strong enough to retain possession approaches concerned authorities to intervene—Such intervention—Legality of.*

*Held*, that cases are not unknown in which in spite of an injunction issued by a Civil Court the parties had tried to take forcible possession of the land in disregard of the injunction orders. If a party in whose favour there is an injunction by the Civil Court is not strong enough to retain the possession and approaches the authorities to intervene to protect its possession it would be in the fitness of things, if the police intervenes in such a situation so that the orders passed by the Civil Court are not flouted and are respected. In such a situation it will not be parallel proceedings because the proceedings launched under section 145 of the Code of Criminal Procedure, 1974 are in aid of the Civil Court.

(Para 3)

*Held*, that the proceedings under section 145 of the Code in a case where they have been started at the instance of a party in whose favour there is an order of a civil court are competent to protect and strengthen his claim. The learned Additional Sessions Judge was not justified in setting aside the same.

(Para 3)

*Petition for revision under section 401 of Cr.P.C. of the order of the Court of Shri C. R. Goel, Additional Sessions Judge, Sirsa, dated 4th December, 1985 reversing that of Shri Uggar Sen, H.C.S. Sub-Divisional Magistrate, Sirsa, dated 8th August, 1984 accepting the revision petition and setting aside the impugned order and proceedings, initiated by the learned trial Magistrate under section 145 of the Code of Criminal Procedure. Charges : Under section 145 C.P.C.*

R. S. Cheema, Advocate, for the Petitioner.

P. C. Mehta, Advocate with S. N. Saini, Advocate, for the respondent No. 2.

Ram Niwas Lohan, Advocate, for State.

None, for respondent No. 3.

## ORDER

*Harbans Singh Rai, J.*

(1) Jaswant respondent filed a civil suit for permanent injunction against Jagdish Ram petitioner and his brother Onkar Chand. The learned Sub-Judge before whom the said case was pending issued an *ex parte* injunction in favour of Jaswant and against Jagdish Ram and others thereby restraining them from interfering in his possession over the suit land. This *ex parte* ad-interim injunction was confirmed on 21st September, 1983 after hearing the parties. The injunction order passed by the Sub-Judge was confirmed by the learned District Judge, Sirsa,—*vide* his order dated 17th October, 1983 in an appeal filed by Jagdish Ram and Onkar Chand.

(2) According to the calender filed by the police under section 145, Criminal Procedure Code (for short the 'Code'), Kishan Chand and his son Jaswant moved an application before the police to the effect that Jagdish Ram, petitioner and Onkar Chand wanted to take forcible possession of the land in spite of the fact that the civil Court had restrained them. Police after enquiry moved the Sub-Divisional Magistrate, Sirsa who, after enquiry, found that Jagdish Ram, petitioner and his brother Onkar Chand were in possession of the property in dispute. Feeling aggrieved, Jaswant respondent filed a revision in the Court of Additional Sessions Judge, Sirsa, who,—*vide* his order dated 4th December, 1985 accepted the revision and held that as the matter was before a civil Court the Sub Divisional Magistrate had no Jurisdiction to start parallel proceedings under section 145 of the Code and set aside the said proceedings.

(3) Feeling aggrieved, Jagdish Ram has filed this revision petition.

(4) I have heard the learned counsel for the parties and gone through the record and relevant law with their help.

(5) It is not disputed that civil Court had granted an ad-interim injunction in favour of Jaswant restraining Jagdish Ram and his brother Onkar Chand from interfering in his possession over the suit land. This injunction was confirmed by the District Judge in an appeal filed by Jagdish Ram and Onkar Chand. It is not disputed that the civil suit and the proceedings under section 145 of the Code relate to the same land.

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(6) The learned Additional Sessions Judge while accepting the revision has held that as civil suit was pending, no proceedings under section 145 of the Code could be initiated and on this score set aside the said proceedings.

(7) Mr. R. S. Cheema, the learned counsel for the petitioner, has submitted that the learned Additional Sessions Judge has taken an erroneous view of the legal position. The proceedings under section 145 of the Code are competent in the circumstances of this case. He has cited a number of judgments in support of his contention, whereas Mr. P. C. Mehta, learned counsel for respondent No. 2, has asserted that as the matter is pending before civil Court no parallel proceedings under section 145 of the Code could be started. I have considered the contentions of both the learned counsel and gone through the authorities cited by them.

(8) Section 145 of the Code empowers the authorities concerned to take immediate preventive action, in an emergency. Cases are not unknown in which in spite of an injunction issued by a civil Court the parties had tried to take forcible possession of the land in disregard of the injunction orders. If a party in whose favour there is an injunction by the civil Court is not strong enough to retain the possession and approaches the authorities to intervene to protect its possession it would be in the fitness of things if the police intervenes in such a situation so that the orders passed by the civil Court are not flouted and are respected. In such a situation it will not be parallel proceedings because the proceedings launched under section 145 of the Code are in aid of the civil Court. Jaswant respondent had approached the authorities to start proceedings under section 145 of the Code as he was feeling apprehensive that the other side may not take possession and dispossess him in spite of the orders of the civil Court. It is on his revision that the learned Additional Sessions Judge has held that the proceedings under section 145 of the Code are not competent. Jagdish Ram who felt weak and sought the help of the executive authorities in spite of the orders of the civil Court and requested for proceedings under section 145 of the Code now cannot challenge the same in the round that they are parallel proceedings, nor the learned Additional Sessions Judge was legally justified in setting aside the proceedings on the ground that the matter was already before the civil Court. The proceedings under section 145 of the Code in a case where they have been started at the instance of a party in whose favour there is an order of a civil Court are competent to protect and

strengthen his claim. The learned Additional Sessions Judge was not justified in setting aside the same.

(9) In view of the legal position as explained above, the order of the learned Additional Sessions Judge is not justified. It is set aside and the case is remanded back to him to decide the revision filed by Jaswant, respondent against Jagdish, petitioner and his brother Onkar Chand on merits, as the proceedings under section 145 of the Code are competent. With these observations, this revision stands disposed of.

P.C.G.

*Before : G. C. Mital and S. S. Sodhi, JJ.*

COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

*versus*

PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING  
FEDERATION LTD.,—*Respondent.*

*Income Tax Reference No. 58 of 1982*

April 4, 1989.

*Income Tax Act (XLIII of 1961)—S. 81(1)(c)—Exemption—Society earning income from sale of agricultural produce by purchase from its members—Income of society—Whether agricultural income—Such members not producers—Amount of subsidy received by assessee—Such income—Whether can be exempted.*

*Held*, that even if a member is not a producer of agricultural produce the income derived from purchase and sale of agricultural produce from a member is exempt from levy of income tax, and such income is to be deducted in computing the total income of the assessee.

(Para 6)

*Held*, that the character of the receipt is to be considered and if subsidy was given towards the purchase price of foodgrain it will partake the character of reducing purchase price by the amount of subsidy with the result that the income will go up by the amount of subsidy. Even if the income of the assessee goes up by Rs. 40,000, since this relates to the sale and purchase of agricultural produce