

the money had come from the persons and their sources have also been established and whether the sources were sufficient enough or not could have been considered only in their hands and not in the hands of the assessee. Rejection of an explanation does not automatically conclude that there was concealment on the part of the assessee. The penalty is accordingly quashed.

In the result, the appeal is allowed.”

It may also be stated that the petitioner had filed an application under section 256 (1) of the Act which was also rejected and the petitioner did not care to take any steps to approach the High Court under section 256(2) of the Act. The gravamen of the charge in the complaint filed against the respondent is the concealment of income and/or furnishing of inaccurate particulars by the respondent for the assessment year 1980-81 and on the same facts penalty orders were passed. Admittedly, penalty orders have been quashed by the Income Tax Appellate Tribunal with a finding that there is no such concealment of income by the respondent. Once the basis of the complaint had disappeared, there was no justification to proceed with the prosecution of the respondent on the same ground. I do not find any irregularity or illegality in the two orders (Annexures P.2 and P.4) passed by the Courts below.

(13) For the reasons mentioned above, I do not find any merit in this petition and the same is hereby dismissed.

S.C.K.

Before M. L. Koul, J.

JASBIR SINGH & OTHERS,—*Petitioners.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

Crl. M. No. 13267-M of 1995.

January 3, 1997.

Code of Criminal Procedure, 1973—Ss. 145 & 146—Preliminary order—Passing of—Essential requirements.

Held, that a preliminary order shall necessarily contain (1) statement that the Magistrate is satisfied as to the existence of

dispute likely to cause a breach of the peace; (2) the grounds for his being so satisfied; (3) a correct description of the property in respect of which the proceedings are instituted; (4) the parties concerned in such dispute and (5) a direction requiring the parties or either of them to attend the Court on a particular day and put in the written statement of their claim in respect of the fact of the actual possession of the land in dispute. The order passed in the present case is lacking in all the essential requirements of a preliminary order under Section 145 Cr.P.C. The Magistrate has exercised his powers in hot haste and without any application of his mind to the provisions of law. Hence all the proceedings taken by the Magistrate are quashed.

(Paras 8, 9, 18)

Further held, that the civil suits between the parties were pending and the Civil Judge had directed the parties were pending and the Civil Judge had directed the parties to maintain *status quo* regarding the possession in all respects. In view of this order, the Executive Magistrate was in no manner competent to appoint a receiver in the matter under Section 146 Cr.P.C., once the *status quo* orders were issued by the Civil Court.

(Para 12)

M. L. Sarin, Sr. Advocate, (S. S. Toor, Advocate, with him),
for the petitioners.

H. S. Hooda, Advocate General, Haryana, with Vimal Kumar,
Advocate.

R. K. Handa, Advocate, for the Gram Panchayat.

Y. P. Malik, Advocate, for respondent No. 22.

JUDGMENT

M. L. Koul, J.

(1) By mode of this petition within the ambit of Section 482 of the Criminal Procedure Code, the quashing of the proceedings initiated under Section 145 Cr.P.C. upon the report of Station House Officer, Police Station, Pundri district Kaithal described in Annexure P-4 on which the final order as contained in Annexure P-15 was passed, is sought on the various grounds.

(2) The brief facts of the case giving rise to these proceedings are that some land measuring 253 Kanals situate in village Dussain belongs to village Gram Panchayat and the petitioner No. 4 Baghail Singh son of Kikar Singh was also cultivating about 1½ Acres out of

this land. The respective parties are in peaceful possession of the Gram Panchayat land as 'Zumla Malkan' which is about 1038 Kanals. Its possession lies with the petitioners as Pattedar and the Gram Panchayat had been leasing it out to the respective parties on the year to year basis. Entries to that effect are contained in Jamabandies and Khasra Girdawries as well showing that the parties are 'Patedaran'. The then Gram Panchayat leased out the land measuring 253 Kanals belonging to it by passing a resolution in an open auction dated 20th November, 1994 and the same was finalised in favour of Jaswant Singh and others at the auction price of Rs. 82,000. The Gram Panchayat passed a resolution that the land belonging to the Gram Panchayat i.e. 253 Kanals be leased out to respondents Jaswant Singh and others for six months only i.e. 20th November, 1994 to 20th May, 1995 for sowing the Rabi crop only. The said Jaswant Singh and others filed civil suit for permanent injunction restraining the Gram Panchayat through its Sarpanch from dispossessing them from the land belonging to the Gram Panchayat. The learned Sub Judge 1st Class, Kaithal, Shri Jai Singh Jangra,— *vide* his order dated 10th June, 1995 restrained the defendant-Gram Panchayat by passing a conditional order to deposit a sum of Rs. 60,000 as security in favour of the Gram Panchayat failing which the stay granted by the Court was to be vacated. As the respondents failed to deposit Rs. 60,000 in the Court therefore the stay granted by the Court stood vacated. Against the said order the appeal was filed by the Gram Panchayat before the District Judge who while exercising the powers as a vacation Judge stayed the operation of the order dated 10th June, 1995.

(3) According to the petitioners they are in possession of 1038 Kanals of land belonging to the Panchayat since the last 40 years. Earlier the total land was Barani and uncultivable, low lying area showing as lake in the Jamabandi. The petitioners by putting their hard labour made some of its part cultivable. The Panchayat by passing resolution started it giving on year to year lease basis to the petitioners in an open auction in the village.

(4) By an amendment in Section 2 of the Punjab 'Village Common Lands (Regulations), Haryana amendment Act No. 9 of 1992, the land in question was mutated in the name of the Gram Panchayat without hearing the parties. In this regard Civil Writ Petition Nos. 17438 of 1994, 5962/94, 7108/94, 6097/94, 7407/94, 7713/92 and 4614 of 1993 were filed and the Division Bench of this Court allowed all these writ petitions. The order passed in C.W.P. No. 17438 of 1994 was followed in the other writ petitions as well, saying that in

view of the Full Bench of this Court in *Residents of Village Sadipur, Tehsil Naraingarh v. State of Haryana* (1), the respondents (i.e. State of Haryana and Gram Panchayat, Dussain) could not resort to the provisions of the Amended Act declared as *ultra vires*. In view of that judgment the respondents were restrained from taking possession from the petitioners under the provisions of the Amended Act.

(5) Respondent Nos. 4 to 21 taking advantage of the application of petitioner No. 4 Baghail Singh filed with the police seeking legal action against the respondents who were disturbing his possession with regard to 1½ Acres of Panchayat land in his possession were successful in getting a calendar prepared by respondent No. 2 under the influence of one Ishwar Singh, Speaker of Haryana Assembly who belongs to respondents' constituency and the same was attached by respondent No. 1—Sub Divisional Magistrate, Kaithal under Section 146 of the Code of Criminal Procedure. In the calendar Khasra numbers of the land belonging to Zumla Malkan under the possession of the petitioners were added to oblige respondent Nos. 4 to 21 who are the supporters of said Ishwar Singh, Speaker. Although in reply to the notices issued by the Sub Divisional Magistrate for 17th July, 1995 all the documents along with Jamabandies, Khasra Girdawries order of the High Court dated 8th May, 1995 and copies of the orders passed by the Civil Courts restraining the respondents from dispossessing the petitioners from their peaceful possession were filed but the said Magistrate passed an order under Sections 145/146 of the Cr.P.C. and ordered for the appointment of Block Development and Panchayat Officer as receiver. According to the petitioners the order dated 31st July, 1995 is against the law and facts of the case and is without jurisdiction, unconstitutional and against the principles of natural justice.

(6) The objections were filed by the other side by way of written statements. They could not rebut the fact that a dispute arose with regard to 1½ Acres of land belonging to the Gram Panchayat the possession of which was with the petitioner Baghail Singh who was cultivating it. According to the Panchayat-respondent the said land was leased out in favour of Jaswant Singh and a dispute arose between Baghail Singh and Jaswant Singh with regard to possession to which the Panchayat was not a party.

(7) At the out-set it is material and appropriate to mention that the whole proceedings have originated from a complaint filed by the petitioner Baghail Singh seeking the help of the police to protect his possession with regard to 1½ Acres of land from interference as a Pattedar from the village Panchayat. It is upon this complaint that a calendar was prepared by respondent No. 2 on 5th July, 1995. Not only the land in question measuring 1½ Acres was requested by him to be attached and receiver appointed within the concept of Section 145 Cr.P.C. but it included the other land occupied by the petitioners measuring 1038 Kanals held by them as Pattedars for the last more than three decades. On this calendar the order passed by Mr. M. K. Mahajan, Sub Divisional Magistrate, Kaithal is as under :—

“Whereas it has been reported by the police of Police Station Pundri that there is a dispute regarding the possession of land measuring 1038 Kanals situated in village Dussain District Kaithal, I direct both the parties to attend this Court on 17th July, 1995 at 9 A.M. in person or through pleader and put in their written statement and other documents regarding their respective possession on the disputed land. Given under my hand and the seal of the Court this 12th day of July, 1995.”

It is on the basis of this preliminary order that the learned Sub Divisional Magistrate, after hearing the parties attached the land measuring 1038 Kanals situate in village Dussain, tehsil and district Kaithal under Section 146 Cr.P.C. and appointed the Block Development and Panchayat Officer, Pundri as a receiver so that the parties may not fight and the peace is maintained. After the decision of the Civil Court, the possession of the disputed land was ordered to be delivered to the party whosoever will prove its possession.

(8) After quoting at verbatim the preliminary order passed by the trial Magistrate as mentioned above, it is to be found whether the preliminary order so passed is covered by the essential ingredients of the law as required for passing a preliminary order within the ambit of Section 145 Cr.P.C. or not. There are numerous authorities of the different High Courts and that of the Apex Court as well to hold as to what are the essential conditions of a preliminary order to be observed by a Magistrate while passing such an order under Section 145 Cr.P.C. *Such an order shall necessarily contain* : (1) a statement that the Magistrate is satisfied as to the existence of a dispute likely to cause a breach of the peace; (2) the grounds for his being so satisfied; (3) a correct description of the property in respect

of which the proceedings are instituted; (4) the parties concerned in such dispute; and (5) a direction requiring the parties or either of them to attend the Court on a particular day and put in the written statement of their claim in respect of the fact of the actual possession of the land in dispute.

(9) The above preliminary order passed in the present case is lacking in almost all the essential requirements of a preliminary order under Section 145 Cr.P.C. The Magistrate has not cared to narrate in his order the facts of the case so as to record a finding that he was satisfied as to existence of a dispute between the parties which was likely to cause a breach of peace on the spot. All that is said on this point is that it has been reported by the Police Station, Pundri that there is a dispute regarding the possession of the land measuring 1038 Kanals situated in village Dussain district Kaithal. *The Section requires the satisfaction of the Magistrate and not of a party to the dispute or of the police who initiated the proceedings.* In this way the Magistrate has not at all given the grounds of his being satisfied about a dispute with respect to the possession of the immovable property which is a cultivable land. He did not at all mention in his order that under what Khasra numbers the land in question was covered. It is possibly due to his zeal under the influence of some authority or lack of attention he has incorporated 1038 Kanals of land in the order when actually 1½ Acres of land was involved with regard to which dispute had arisen for possession. The Magistrate has not recorded any direction to either party to file their objections with respect to the *actual possession of the land in dispute* which was necessary under the law. Instead he has asked the parties by notice that they should present themselves through their pleaders or in person and file the written statement and documents regarding their respective possession on the disputed land. Thus it emerges and is found that the preliminary order passed by the Magistrate is full of lacunae and against the law as laid down under Section 145 Cr.P.C. and therefore the proceedings based on this order are illegal and as such the entire superstructure must fall down. As the preliminary order is lacunae therefore the final order is equally not maintainable.

(10) It has often been found that many a genuine cases fall through because of the incompetence or inattention of the trial Magistrates for they do not pass the preliminary orders in accordance with law while taking care of essential ingredients of a preliminary order as laid down under Section 145 Cr.P.C. as narrated above.

Much water flows down by the time such aggrieved parties get justice from the higher Court of such illegal orders of the Magistrate. Many a time some innocent people become the scape goats of such orders of the Magistrates passed on the reports of the police without application of mind and least caring as to whether the ingredients of Section 145(1) Cr.P.C. are fulfilled or not in passing such orders.

(11) In order to overcome this inadequacy by the Executive Magistrate and to know as to what are the essential conditions to be fulfilled while recording a preliminary order under Section 145 Cr.P.C., I deem it proper that a copy of the judgment be sent to all the District Magistrates in the States of Punjab, Haryana and Union Territory, Chandigarh, with a direction that they shall get it circulated amongst the Executive Magistracy working in their respective districts for their information and guidance with a report of compliance to the Registry of this Court.

(12) On merits the final order dated 31st July, 1995 passed by the trial Magistrate is devoid of any judicial consideration for the fact that the Magistrate did not care to peruse the documents produced before him especially the revenue record in the form of Jamabandies and the Khasra Girdawries that the property in question was held by the petitioners as Pattedars for more than three decades. Besides some of the petitioners and the respondents had filed civil suits before the Sub Judge 1st Class (Chief Judicial Magistrate), Kaithal, who had directed the parties to maintain *status quo* regarding the possession in all respects till 11th August, 1995. These orders are contained in Annexures P-6, P-8, P-10 and P-12. In view of these orders the Executive Magistrate (Sub Divisional Magistrate) Kaithal, who passed the order on 31st July, 1995 was in no manner competent to appoint a receiver in the matter under Section 146 Cr.P.C. once the *status quo* orders were issued by the civil Court on 14th July, 1995. It indicates that he did not care to take into consideration the fact that the civil Court was in seizin of the matter and it was he alone who could determine as to who was in actual possession of the property especially for the fact that the petitioners were claiming their possession as Pattedars of the Gram Panchayat and with regard to which Jamabandi record was in their favour since 1991-92. They were the Pattedars of the portion of the land comprising 1038 Kanals of land as Zumla Malkan with regard to which even this Court,—*vide* its order dated May 8, 1995 in Civil Writ Petition No. 17438 of 1994 followed in other Civil Writ Petitions as well (*supra*) had directed the State and the Gram Panchayat not

to dispossess the petitioners from their possession under the Punjab Village Common Land (Regulations) Haryana Amendment Act, 1992 which was declared *ultra vires* by the Full Bench of this Court.

(13) On the premises, it is found that the whole material was in favour of the petitioners that they held the possession of the land as pattedars under the Gram Panchayat and the respondents derived a benefit of getting an illegal order passed in their favour out of the complaint filed by petitioner No. 4 with the police that the respondents be restrained from taking his possession with regard to 1½ Acres of land held by them as a Pattedar from the Panchayat illegally and forcibly. Both the police and the Sub Divisional Magistrate managed the proceedings and on a calendar prepared by the police the Sub Divisional Magistrate without any rhyme or reason passed the order within the ambit of Section 146 of the Cr.P.C. which is totally illegal and against the provisions of law.

(14) It has been held in *Dharampal and others v. Ramshri (Smt.) and others* (2) that :—

“The determination by a competent Court of the rights of the parties spoken of in Section 146(1) has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a receiver in respect of the subject matter of the dispute pending the final decision in the suit. The moment the competent Court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency between the order passed by the civil Court and order of attachment passed by the Magistrate. The proviso to sub-section (1) of Section 146 itself takes cognizance of such a situation. When a civil court passes an order of injunction or receiver, it is the civil court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the civil court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute. The other incidental or

consequential orders as may be just in proviso (b) to subsection (2) of Section 146 may include an order of withdrawal of the attachment in view of the seizure of the matter by the civil court and the consequent want of apprehension of breach of the peace. It is, therefore, not correct to say that the property continues to remain under attachment of the Magisterial order till the rights of the parties are decided finally by the competent Court of law. The Magistrate can withdraw the order of attachment passed by him even during the pendency of the dispute in the civil Court."

(15) The aforesaid case law holds direct bearing on the merits of the present case for the fact that the civil proceedings are already pending disposal before the court of law who has passed the *status quo* order as well and, therefore, the Magistrate by no stretch of imagination could pass the preliminary order and the final order that the property shall remain attached under the possession of the receiver i.e. Block Development and Panchayat Officer. The Magistrate could easily withdraw the order of receiver passed by him for the fact that the civil disputes were pending before a competent Court of law. He in his zeal and zest without fulfilling the requirement of law as laid under Section 145 of the Cr.P.C. as described above took the proceedings under Section 145 Cr.P.C. illegally and passed the final order by appointing a receiver to take that property also into possession which was not at all subject matter in dispute and with regard to which the respondents could not show the fact of the actual possession of the land in dispute.

(16) The learned counsel for the respondents referred to the authority of the Apex Court reported as *Prakash Chand Sachdeva v. State and another* (3), and argued that where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under Section 145 Cr.P.C. On perusal of this case law it is found that their lordships of the Supreme Court in a dispute which has arisen between the father and the son with respect to the portion of some part of the house have held that neither the High Court nor the Sub Divisional Magistrate cared to ascertain if the respondent (the son) had any claim to lawfully prevent the appellant (the father) from entering into his own house. They have held that where the dispute is not on the right to possess-

(3) 1994 (3) R.C.R. 217.

sion but on the question of possession the Magistrate is empowered to take the cognizance under Section 145 Cr.P.C. It was found that on the own showing by the son the property was ancestral and he was willing to permit his father the appellant to live with him but not agreeable to permit him to occupy the separate portion which was in his possession. It was in such circumstances that the Hon'ble Supreme Court held that the authority in *Ram Sumer Puri Mahant v. State of U.P.* (4), could not help the son and the appellant was entitled to possession.

(17) In the present case the petitioner Baghail Singh was agitating the question of possession over 1½ Acres of land held by him out of Zmula Malkan as a Pattedar from the Panchayat which was being endangered by the respondents and therefore sought the necessary help from the police to protect his possession. The police instead of seeking initiation of proceedings about the said land referred the whole matter to the Magistrate with regard to the right of possession between the people who were not parties to such proceedings at the time the complaint was filed by the police. The police of its own incorporated 1038 Kanals of land in the calendar and sought the preliminary order from the Magistrate within the concept of Section 145 Cr.P.C. and also appointment of the receiver. It has been held in *Ram Sumer Puri's case* (supra) that a suit or remedy in civil court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal court particularly when possession is being examined by the civil Court and the 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.

(18) In the instant case although the title of the property in question lies with the Panchayat and its possession is held by the petitioners for the last three decades as Pattedars, the same could not be taken away by the Sub Divisional Magistrate by passing the orders contained in Annexures P-13 and P-15 against the provisions of law. The Sub Divisional Magistrate has exercised his powers in hot haste and without any application of his mind to the provisions of law passed the aforesaid orders in contravention of the law as

provided under Sections 145 and 146 Cr.P.C. Hence all the proceedings taken by the Sub Divisional Magistrate, Kaithal, including the calendar prepared by the police are quashed and the parties are left to the decision of the civil Court in accordance with law before whom the civil suits are pending. The Sub Divisional Magistrate shall hand over the usufruct to the people whose property stands entrusted by him to the care of Block Development and Panchayat Officer as a receiver and see that such usufruct is returned to the concerned parties in accordance with law within a period of two months.

S.C.K.