

Before J. S. Sekhon, J.

CHARAN SINGH AND OTHERS,—*Petitioners.*

versus

S.D.M., JALLANÐHAR AND OTHERS,—*Respondents.*

Criminal Misc. No. 5778-M of 1990.

10th May, 1991.

Code of Criminal Procedure, 1973 (II of 1974)—Ss. 145 & 482—Exercise of inherent power—Civil suit pending between the parties—Maintainability of proceedings under S. 145 Cr. P.C.

Held, that the inherent powers of the High Court under S. 482 of the Code are to be exercised sparingly and not in those cases where there is a specific provision in the code for the redress of the grievance of the aggrieved party or where there is express bar of law enacted in any other provision of the code.

(Para 3)

Held, further, that parallel proceedings under S. 145 of the Code and the civil suit regarding the same land would amount to abuse of the process of the Criminal Court. Therefore, the impugned order instituting the proceedings under S. 145 of the Code and the resultant proceedings therefrom are quashed.

(Para 7)

Petition U/S 482 Criminal Procedure Code praying that the orders Annex P-1 and P-2 may be quashed.

It is further prayed that during the pendency of the petition, operation of Annex. P-1 and P-2 may be stayed.

It is further prayed that filing of certified copies of Annexures P-1, P-4, to P-6 may be dispensed with U/S 145, Cr. P.C., P.S. Adam-pur D.D. 8.

J. S. Randhawa, Advocate, for the Petitioners.

G. S. Cheema, A.A.G., Punjab, for the state.

Sukhbir Singh, Advocate, for Private Respondent No. 2.

JUDGMENT

(1) Charan Singh, Resham Singh and Sucha Singh petitioners arraigned as second party before the trial Court are brothers of Lachman Singh arraigned as first party. On the application of Lachman Singh that the disputed land located in the area of village Haripur is jointly owed by him as well as other brothers and that his brothers Sucha Singh is not allowing him to cultivate

the land/and that Sucha Singh was cultivating the same forcibly, the police of Police Station, Adampur forwarded report to the Sub-Divisional Magistrate (Civil) for taking action under section 145 of the Code of Criminal Procedure, 1973, contending that there was apprehension of breach between the parties over the possession of the disputed land. The Sub-Divisional Magistrate,—*vide* order dated 1st January, 1990 (Annexure P. 3) observed that if the land is being cultivated by Sucha Singh then the party concerned could seek his remedy in the proper court of law for getting possession of the property. However, as there was no mention in the revenue record regarding *mushtarka khata* of the parties, the S.H.O. was directed to ascertain the true facts and then submit report in accordance with the provisions of law. Accordingly, the police submitted second report upon which the Sub-Divisional Magistrate,—*vide* order dated 23rd April, 1990 considered the desirability of initiating proceedings under section 145 of the Code as the report revealed that there was apprehension of breach of peace between the parties over the possession of this land. Notices were issued to the parties for 8th May, 1990 to put in their written statements in respect of their respective claims. In the meanwhile, in 24th April, 1990, the police put in another report for attachment of the land stating that there was immediate apprehension of breach of peace. The Sub-Divisional Magistrate then passed order Annexure P. 2 on 4th May, 1990 attaching the land in dispute and appointing the Receiver under the provisions of section 146 of the Code. The second party then went in revision petition against the order passed under section 146 of the Code which was dismissed by the Additional Session Judge, Jalandhar, by holding that no such revision petition was maintainable as the order was interlocutory in nature. Under these circumstances, the petitioners have invoked the inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure for quashment of the proceedings under section 145 of the Code as well as the order under section 146 of the Code resulting therefrom.

(2) The learned counsel for the private respondent at the outset contended that application under section 482 of the Code is not maintainable as the provisions of section 397 (2) of the Code clearly bar the filing of revision petition against the interlocutory order. Reliance in this regard has been placed on the decision of the Apex Court in *Amar Nath and others v. State of Haryana and others*, (1)

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and *Mostt. Simrikhia* versus *Smt. Dolley Mukherjee, Smt. Chhabi Mukherjee and another*, (2). The learned counsel for the petitioners, on the other hand, pointed out that the decision of the Apex Court in *Amar Nath's case* (supra) qua the scope of section 482 of the Code of Criminal Procedure was subsequently not approved by the Apex Court in *Madhu Limaye v. State of Maharashtra*, (3).

(3) The Apex Court in *Madhu Limaya's case* (supra) after elaborate discussion regarding the scope of section 482 of the Code viz-a-viz provisions of section 397 (2) of the Code, in para 8 of the judgment had observed as under :—

“Under Section 435 of the 1988 Code the High Court had the power to “call for an examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and to the regularity of any proceedings of such inferior Court” and then to pass the necessary orders in accordance with law engrafted in any of the sections following Section 435. Apart from the revisional power, the High Court possessed and possesses the inherent powers to be exercised *ex debito justitiae* to do the real and the substantial justice for the administration of which alone Courts exist. In express language this power was recognised and saved in Section 561-A of the old Code. Under section 397(1) of 1973 Code, revisional power has been conferred on the High Court in terms which are identical to those found in Section 435 of the 1988 Code. Similar is the position apropose the inherent powers of the High Court. We may read the language of Section 482 (corresponding to Section 561-A of the old Code) of the 1973 Code. It says :—

“Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

(2) 1990(2) R.C.R. 337.

(3) A.I.R. 1978, S.C. 47.

At the outset the following principles may be noticed in relation to the exercise of the inherent powers of the High Court which have been followed ordinarily and generally, almost invariably barring a few exceptions:—

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In the earlier part of the judgment, the earlier decision of the Apex Court in *Amar Nath's case* (supra) *qua* the lack of inherent jurisdiction of the High Court due to the bar enacted in section 397 (2) of the Code was not approved. Thus, the law is well-settled now that the inherent powers of the High Court under section 482 of the code are to be exercised sparingly and not in those cases where there is a specific provision in the code for the redress of the grievance of the aggrieved party or where there is express bar of law enacted in any other provision of the code. It was further held that the bar under section 397(2) of the Code is applicable to the revisional powers only and not to the inherent powers in those cases where the aggrieved party challenges the maintainability of proceedings as such on other grounds.

(4) The observations of the Apex Court in *Mostt. Simrikhia's case* (supra) to the effect that the second application under section 482 of the Code of Criminal Procedure being not entertainable, as the exercise of power under section 482, on second application of the same party on the same ground virtually amounts to review of the earlier order which is contrary to the spirit of section 362 of the Code and the High Court has no jurisdiction to review its earlier order, are not at all attracted to the facts of the present case as herein the petitioners challenge the maintainability of the proceedings under section 145 of the Code on the ground that they being already in settled possession of the land and a civil suit being pending between the parties, the parallel proceedings under section 145 of the Code are not maintainable.

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(5) On merits of the case, it transpires that the order Annexure P. 3 of the trial Court reveals that the local police itself had found on the allegations of Lachhman Singh and others Party No. 1 that Sucha Singh petitioner was in cultivating possession of the entire land. Thus the apprehension of breach of peace would arise only if Lachhman Singh Party No. 1 would take any steps to forcibly oust him. By no stretch of imagination can it be said that Party No. 2 Sucha Singh etc. who are in possession of the land would in any way be contributing towards breach of peace if Lachhman Singh did not take any steps to oust them forcibly. In other words, it can be well said that Sucha Singh etc. in such like contingency would be acting to preserve their *de facto* possession of the land.

(6) The matter does not rest here as the perusal of Annexure P. 4 clearly shows that in a suit filed by Sucha Singh against Lachhman Singh, the Civil Court,—*vide* order dated 23rd December, 1989 had directed the parties to maintain *status quo* regarding the property in dispute. Thus, under the above-referred circumstances, the order of *status quo* would assume importance, especially when both the parties are admittedly co-owners being the sons of Sohan Singh, the last male holder of the property.

(7) Consequently, parallel proceedings under section 145 of the Code and the civil suit regarding the same land would amount to abuse of the process of the Criminal Court. Therefore, the impugned order Annexure P. 1 instituting the proceedings under section 145 of the Code and the resultant proceedings therefrom including the order Annexure P.2 are ordered to be quashed by accepting this petition.

(8) It is, however, made clear that the above-referred observations will have no bearing on the merits of the civil suit pending between the parties.

S.C.K.

Before A. L. Bahri & S. S. Grewal, JJ.

STATE OF PUNJAB,—Appellant.

versus

ASHOK KUMAR,—Respondent.

Criminal Appeal No. 308-DBA of 1983.

29th May, 1991.

Prevention of Food Adulteration Act, 1954—Ss. 13(2), 16(1) (a)
(i)—Prevention of Food Adulteration Rules, 1956—Rl. 9-A—Sample