Smt. Tulsi Devi and ors. Vs. Bhagat Ram and anr.

LegalCrystal Citation : legalcrystal.com/889977

Court : Himachal Pradesh

Decided On : Jul-22-1982

Reported in : 1983CriLJ72

Judge : Vyas Dev Misra, C.J.

Appellant : Smt. Tulsi Devi and ors.

Respondent : Bhagat Ram and anr.

Judgement :

ORDER

Vyas Dev Misra, C.J.

1. This revision is directed against the order of Sessions Judge, Mandi, upholding the order of attachment passed under Section 140 of the Criminal P. C. by Sub-Divisional Magistrate, Mandi.

2. Bhagat Ram respondent (referred to as the tenant) is a tenant in a house in Mandi town under the petitioners (referred to as the landlords). The house is double storeyed. The ground floor as well as the first floor is occupied by the tenant. The tenant alleged that on 13th April, 1981 the landlords troke open the lock of the door of the first floor and threw the articles out and occupied the first floor. At that time the tenant was not in the house. When the tenant tried to enter the first floor, the landlords threatened him with dire consequences. The tenant moved an application under Section 145 of the Criminal P. C. After recording preliminary evidence, the Sub-Divisional Magistrate passed a preliminary order in terms of Section 145 of the Code and called upon the landlords to show cause as to why they should not be restrained from (sic) the land in dispute and put in written statement of their claim. The landlords filed a reply to the notice on 28th May, 1981. 24th June, 1981 was fixed for recording the evidence. Since the Presiding Officer was on tour on that day, the matter was adjourned to 25th June, 1981, for proper orders. On that date the matter was adjourned to 9th July, 1981. On 9th July, 1981 since the witnesses were not present, it was adjourned to 5th August, 1981. By that time the records had been summoned by the Sessions Judge and no worthwhile progress could be made.

3. During the pendency of these proceedings the tenant moved an application under Section 14G of the Code. It was prayed that the landlords were trying to dismantle the roof of the first floor which was objected to by the tenant. It was thus prayed that the property be attached since it was a case of emergency. This application was made on 2nd June, 1981. The Magistrate without passing any order kept it for consideration for 5th June, 1981. On that day the presiding officer being on tour, the matter was

adjourned for 6th June, 1981. Then 9th June, 1981 was fixed for the evidence of the applicant. The matter was thereafter adjourned for 11th, 12th, 15th, 18th, 22nd, 24th and 25th June, 1981. It was on 27th June, 1981 that the order of attachment was passed. Against this order one of the landlords filed a revision before the Sessions Judge who dismissed the same.

4. A preliminary objection has been raised that the present revision being a second revision is barred under Section 397 (3) of the Criminal P. C. Mr. Sharma, learned Counsel for the petitioners, submits that the present revision petition be treated as one under Section 482 of the Code and Article 227 of the Constitution. Mr. Mandhotra learned Counsel for the tenant, submits that petition under Section 482 of the Code is not maintainable. He cites a Division Bench judgment of Orissa High Court in Deena Nath Acharya v. Dailari Charan Patra 1975 Cri LJ 1931. This Bench held that the inherent powers of the High Court under Section 482 cannot be invoked in a case which would be in conflict with any specific provision of the Code such as Section 399 (3) which makes the decision of the Sessions Judge final.

5. I am afraid I cannot agree with the aforementioned Division Bench decision of Orissa High Court. Inherent jurisdiction of the High Court under Section 482 of the Code is to be exercised wherever there is an abuse of the process of any court or otherwise to secure the ends of justice. This power of the High Court is unfettered. The Section itself specifies.

Nothing in this Code shall be deemed to limit or affect the inherent powers 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.' This section obviously overrides other provisions of the Code. Moreover, the revisional powers and the inherent powers are two distinct powers of the court. The inherent powers have to be exercised within a very limited sphere whereas the revisional powers are indeed very wide.

6. I find that the Supreme Court in Amar Nath v. State of Haryana : 1977CriLJ1891 took the view that the inherent powers would not be available to defeat the bar contained in Section 397 (2) of the Code. In Madhu Limaye v. State of Maharashtra : 1978CriLJ165 . the Supreme Court ruled that the earlier view was not correct. It was also ruled that the inherent powers were unfettered and could be exercised irrespective of the bar contained in Section 397 (2). It was, however, observed that the High Court must exercise the inherent powers very sparingly. Madhu Limaye's case (supra) was followed by the Supreme Court in Rai Kapoor v. State (Delhi Administration) : 1980CriLJ202 . It is, therefore, well settled that the application under Section 482 of the Code is maintainable.

7. The scope of Article 227 of the Constitution was laid down by the Supreme Court in Babhutmal Raichand Oswal v. Laxmibai R. Tarte : AIR1975SC1297 . It was ruled that the power of superintendence granted to the High Court 'is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

8. It is, therefore, within these limits that I have to scrutinise this case, Mr. Sharma contends that it was essential for the Magistrate to give the petitioners a notice before deciding the subsequent application made under Section 146 of the Code.

9. Section 146 empowers a Magistrate to attach the subject matter of a dispute. The relevant part of his section reads:

(1) If the Magistrate at any time after making the order under Sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

Attachment can be ordered in one of the three circumstances envisaged by this section. These are (1) case of emergency, (2) none of the parties being found in possession in terms of Section 145, and (3) inability of the Magistrate to satisfy himself as to who are the parties in such possession of the subject of dispute. The last two will only arise after the proceedings under Section 145 have been completed. However the first may arise at any time. The purpose of Section 145 being to prevent a breach of peace, attachment can be straightway ordered in case of emergency without notice to (he opposite party. Therefore, it is not correct to say that before pass-ins an order of attachment under Sec-lion 146, where the case is one of emergency, the opposite party must be heard.

10. Mr. Sharma contends that there was no case of emergency and that is evident from the fact that the Magistrate adjourned the case time and again between 2nd of June to 27th of June, 1981, and there was enough time to give notice to the landlords and hear them. The Magistrate having given a finding of fact that this case was one of emergency, I cannot, in the exercise of my inherent powers or the powers of superintendence, upset this finding. There is evidence on record on the basis of which the Magistrate could come to this conclusion. However, I am constrained to observe that the Magistrate should not have taken such a long time and given so many adjournments in order to decide whether it was a case of emergency or not. If he was to take all this time, and especially when the opposite party was already before him, he should have heard the opposite party.

11. Mr. Sharma submits that the landlords are still willing to give an undertaking that they will not dismantle the roof of the first floor and, therefore, the attachment is not necessary. I find that the Magistrate can withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute. In these circumstances the landlords can always invoke the jurisdiction of the Magistrate under this proviso and convince him that because of their undertaking there is no longer any likelihood of breach of the peace,

12. The result is that the revision is dismissed.