

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**561_A No.36/2011,
CrMA No.36/2011**

Date of Decision: 19/07/2013

Sanjeev Chowdhary Vs. Inderjeet Kapoor and anr.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing Counsel:

For the Petitioner(s) :Mr.Y.E.Tak, Advocate

For the respondent(s) :None.

1. Whether approved for reporting in law journals? : Yes/No
2. Whether approved for publishing in Press/Media ?: Yes/No/Optional

1. Through the medium of instant petition under Section 561-A CrPC, petitioner calls in question legality and correctness of the order dated 01.02.2011 passed by learned Sessions Judge, Jammu in a revision petition titled "***Inderjeet Kapoor Vs Sanjeev Choudhary***". To understand the controversy, it is apt to refer to the factual matrix in brief.

2. The shop, which is the subject matter, was given on rent by respondent no.1 to petitioner in 1997. Petitioner was running the business of

readymade garments under the name and style of “**M/S Bomb Shell**” in that shop. As the business of petitioner flourished and he required more space, he obtained the adjoining shop, also belonging to respondent no.1, on rent. No formal rent deeds were executed. Petitioner renovated his shops by converting the same into a single hall with two shutters and set up a show room. Same was inaugurated on 14.04.2002. It is alleged that in June, 2010, respondents started threatening the petitioner with forcible dispossession which compelled him to approach the Civil Court. He filed a suit for permanent injunction seeking to restrain the respondents from interfering into his peaceful possession of the tenanted premises. Allegedly respondents prevailed upon SHO Police Station-Gandhi Nagar, who too started threatening the petitioner. It is alleged that on 12.10.2010, respondents arrived at the shop with professional criminals, trespassed into the demised premises, held the sales-man of

petitioner as hostage and decamped with Rs.36,000/- from the cash drawer of the shop along with several garments. Petitioner claims to have approached SHO Police Station - Gandhi Nagar, who instead of taking action against the respondents, took the petitioner into custody and permitted the respondents to raise wall inside the shops of petitioner. Allegedly the petitioner was not let off until the wall was raised in between the shops of petitioner. Petitioner also alleged intimidation at the hands of SHO. He was also forced to seek pre-arrest bail from learned Sessions Judge, Jammu. It is alleged that goods were damaged in the shop and petitioner was not allowed to have access to the shops. Apprehending breach of peace on spot, petitioner approached the Court of learned Sub Judge, Judicial Magistrate Ist Class, Jammu with petition under Section 145 CrPC. Learned Magistrate drew a preliminary order and attached the subject of dispute. Respondents did not contest the proceedings

under Section 145 CrPC but preferred a revision petition against the order dated 28.10.2010 passed by learned Sub Judge. The revision petition was heard by learned Principal Sessions Judge, Jammu who accepted the revision petition filed by respondent no.1. The order of attachment passed on the same date was also set aside.

3. Aggrieved of the orders passed by learned Principal Sessions Judge on 01.02.2011, the petitioner assails the same on the ground that pendency of civil proceedings between the parties without there being any final adjudication did not bar proceedings under Section 145 CrPC.
4. Heard the rival sides and perused the Record.
5. It is submitted on behalf of petitioner that learned Sessions Judge landed in error by holding that pendency of civil litigation between the parties with regard to the same subject matter did not warrant initiation of proceedings

under Section 145 CrPC. It is submitted that learned Sessions Judge failed to appreciate that there was no adjudication of the civil litigation before the Civil Court. *Per contra* learned counsel for the respondents submitted that since the present petitioner had filed the civil suit in which parties had been directed to maintain status quo, proceedings under Section 145 CrPC were misconceived.

6. The short question in controversy requiring determination in the instant petition is whether pendency of civil proceedings between the parties in regard to the subject matter of proceedings under Section 145 CrPC with interim direction of status quo operates as a bar to initiation of proceedings under Section 145 CrPC.
7. On careful consideration of the arguments advanced by the rival sides and after wading through the Record, I find that the learned Magistrate has drawn up the preliminary order

dated 28.10.2010, recording his satisfaction about the dispute in regard to subject matter of proceedings giving rise to breach of peace and directing the parties to put in their respective claims regarding possession of the shops, thus assuming jurisdiction to proceed. He has drawn a separate order of attachment of shops in question. The orders passed by learned Magistrate were assailed in a revision petition, by respondent No.1 herein, before learned Sessions Judge Jammu who passed the impugned order dated 01.02.2011 allowing the revision petition and set aside the impugned order. It is the vires of the order dated 01.02.2011 passed by learned Sessions Judge which has been assailed in the instant proceedings.

8. It appears from the record that a civil suit in respect of the subject matter of proceedings was pending disposal in the Court of learned 2nd Additional Munsiff. Petitioner herein has not disputed this fact. Even the learned Magistrate

appears to have made reference to pendency of civil suit in the preliminary order. It emanates from record that the civil suit for permanent injunction had been filed by the petitioner herein against the respondents, in respect of the subject matter of proceedings under Section 145 CrPC, prior to initiation of such proceedings. The record bears testimony to the fact that the suit filed by present petitioner had been dismissed for default on 16.07.2010 and an application for its restoration was made on 13.10.2010 together with an application filed under Section 151 CPC. Pending consideration of restoration application learned 2nd Additional Munsiff appears to have directed the parties to maintain status quo on spot. It appears that the proceedings under Section 145 CrPC were initiated at the instance of present petitioner on 28.10.2010 and the preliminary order as also attachment order was passed on that date. It is, thus, manifestly clear that the civil suit filed by present petitioner had been dismissed but

application for its restoration was pending consideration and the order of status quo had been passed by the learned Trial Court invoking powers under Section 151 CPC. The question for consideration is whether in such situation, initiation of proceedings under Section 145 CrPC was warranted.

9. Learned Sessions Judge has relied upon the ruling of Hon'ble Apex Court reported in AIR 1985 SC 472 to hold that pendency of a civil litigation involving dispute in regard to possession does not justify initiation of parallel proceedings under Section 145 CrPC. In that case, a title suit for possession and injunction in respect of certain property was instituted before the Civil Court. Same was dismissed and the appeal was pending consideration. Proceedings under Section 145 CrPC were initiated with regard to same property when the appeal was pending for disposal. The Magistrate passed the preliminary order and also proceeded to attach the subject matter of dispute. The order was

challenged by the aggrieved party. On these facts, the Hon'ble Apex Court held that multiplicity of litigation was not in the interest of parties and public time should not be wasted in meaningless litigation. It is manifestly clear that the Hon'ble Apex Court was dealing with a case wherein the suit had been adjudicated upon and appeal was pending for disposal when proceedings under Section 145 CrPC were initiated with regard to the same property.

10. In the instant case, no suit was pending on the date of initiation of proceedings under Section 145 CrPC. The suit had been dismissed and only an application for restoration of the suit was pending consideration before the Trial Court in which parties had been directed to maintain status quo on spot. It appears that the dispute about possession arose only after passing of the status quo order forcing the petitioner herein to approach the learned Magistrate for initiation of the proceedings under Section 145 CrPC. The status quo order passed by invoking provisions

under Section 151 CPC, pending consideration of restoration application, did not determine the possession of either side. The ruling relied upon by Hon'ble Apex Court is, therefore, no authority to hold that pendency of restoration application qua a suit dismissed in default of appearance is a bar to initiate proceedings under Section 145 CrPC.

11. In "***Ahad Dar Vs. Maqbool Dar and ors.***" reported in 2001 SLJ 118, this Court, after taking note of a plethora of judicial precedents including the afore-cited ruling of Hon'ble Apex Court held that a status quo order passed in a civil suit cannot be a ground to drop the proceedings under Section 145 CrPC.

12. In "***Randeep Singh vs. State and anr.***" reported in 1996 Cri.L.J. 4052, this Court held that merely because the Civil Court had directed the parties to maintain status quo, that by itself cannot be a bar for a Magistrate in initiating proceedings under Section 145 CrPC. It was

further observed that an order of status quo passed in ex parte does not in any way decide or determine the rights of the parties. In such a situation, if the Magistrate is satisfied on the basis of material before him that there is likelihood of breach of peace on spot, he can legitimately initiate the proceedings under Section 145 CrPC.

13. Reiterating the same legal position, this Court in "***Mohd. Iqbal Wani and anr. Vs. State and ors.***" reported in 2009 (Supp.) JKJ 205 held that where there is no adjudication regarding possession of the suit property by the Civil Court, initiation of proceedings under Section 145 CrPC is not barred.
14. **The legal position on the subject is abundantly clear and speaks of no ambiguity. It is only adjudication of dispute regarding possession by a Civil Court which debars initiation of proceedings under Section 145 CrPC.**

Mere pendency of a civil suit, in which an order of status quo capable of being interpreted either way has been passed, would not be a stumbling block for the Magistrate to invoke jurisdiction under Section 145 CrPC if such Magistrate is satisfied about imminent breach of peace in regard to a dispute in respect of possession of property. As noticed hereinabove in the instant case, the suit for injunction had been dismissed and only an application for restoration of the suit was pending on the date of initiation of proceedings under Section 145 CrPC. The factum of a status quo order passed by invoking provisions of Section 151 CPC could not be interpreted as adjudication of claim by the Civil Court, more so when such order had been passed in *ex parte*. Even the *lis* was not surviving on that day. Thus, there was no legal impediment for the learned Magistrate to

**invoke jurisdiction under Section 145
CrPC.**

15. Viewed thus, the impugned order dated 01.02.2011 passed by learned Sessions Judge, Jammu setting aside the preliminary order and the order of attachment drawn up by learned Magistrate cannot be supported. The same suffers from legal infirmity and has resulted in miscarriage of justice. It is an abuse of process of Court and the same is liable to be quashed. The impugned order dated 01.02.2011 is accordingly quashed.
16. **Disposed of** as such. Court below be informed accordingly.

**(Bansi Lal Bhat)
Judge**

Jammu
19/07/2013
Varun Bedi