

A

PRAKASH CHAND SACHDEVA

v.

STATE AND ANOTHER

DECEMBER 14, 1993

B

[S. RATNAVEL PANDIAN AND R.M. SAHAI, JJ.]

C

*Criminal Procedure Code 1973—Ss. 107, 145. Filing of Civil Suit and dropping of proceedings under S.107—Held: When there is no dispute of title between the parties, the pendency of the Civil suit was no bar to continuance of proceedings under S.145 of the Criminal Procedure Code.*

D

A dispute between S and his son regarding the occupation of an independent portion of the house owned by S leading to S's ouster led to the filing of proceedings under S.107 & S. 145 of the Criminal Procedure Code. S also filed a Civil Suit in which an Order granting an injunction of status quo was made. Proceedings under S.107 were dropped. However, the Magistrate as a consequence of dropping of proceedings under S.107 also dropped the proceedings under S. 145. The High Court affirmed the Sub-Divisional Magistrate's order holding that having resorted to a Civil Suit, the Appellant could not continue proceedings under S.145. Against this, the appellant approached the Supreme Court by Special Leave.

E

Allowing the Appeal, this Court

F

**HELD :** Normally a Civil Suit prevents invoking of criminal jurisdiction, but this is applicable to a suit based on title. However, when the title and the right to possession are not in dispute and the only dispute is as to the question of possession, then the dropping of proceedings under S.107 can not be the foundation for dropping of proceedings under S.145.

[954-G, 955-C]

G

*Madhu Limaye & Anr. v. Sub-Divisional Magistrate Monghyr & Ors., AIR (1971) S.C. 2486, relied upon.*

*Ram Sumer Puri Mahant v. State of UP & Ors., AIR (1985) S.C. 472, distinguished.*

H

**CRIMINAL APPELLATE JURISDICTION :** Criminal Appeal No. 763 of 1993.

From the Judgment and Order dated 15.3.93 of the Delhi High Court in CrI. M (M) No. 451 of 1993. A

Arvind Minocha for the Appellant.

R.C. Pathak for the Respondents.

The Judgment of the Court was delivered by B

**R.M.SAHAI, J.** Ingratitude of a son, compelled his father, the appellant, a retired Assistant Engineer aged 77 years to knock the doors of the Courts, both, civil and criminal, to enter into possession of his own house. As this by itself was not sufficient, the respondent son in the affidavit, filed in this Court, has accused his father of, 'abusing process of Court' on 'false and fabricated allegations'. He has even taken the plea that his father was 'trying to overawe him' instead of seeking partition of the property as it was ancestral and he was co-owner of it, he was harassing him. C

Dispute arose about an independent portion in house no. G-39, Jangpura Extension, New Delhi. It was in occupation of a tenant who admittedly vacated in February 1992. The appellant claims to have occupied it. The claim is supported by a letter written by the tenant to the appellant on 14th April 1992 to the following effect : D

"I have vacated your Ground Floor Flat at G-39, Jangpura Extn. today and possession of the same was handed over to your good-self. E

Please issue me a no dues certificate at the earliest. F

Thanking you and with regards,"

The authenticity of the letter is not disputed. But its effect had been attempted to be diluted by the respondent by claiming that it was written to harm him as he got the house vacated. The respondent claims that the appellant never resided in the house in dispute. May be so. Why the appellant who was residing in another house No. 15/239, New Moti Nagar of his own with family of his other son, who died, decided to shift to the house in dispute, is immaterial. An owner of the house could at his option reside at his one or the other house. Even if it is assumed that the disputed house is ancestral the appellant was not required to explain the reason for H

A his decision to come and live in it. His right to reside could not be disputed. But no sooner he came the problem started. And according to the appellant his report to the police for misbehaviour of his son and his family members went unheeded. That the father had to approach the police authorities against his own son is indeed painful. But that speaks volume about the son. The inaction of the police on which reliance was placed by the son is explainable but not understandable. It does not help the respondent. It only adds to the helplessness of the appellant. In June 1992 it is alleged when he and his wife went to Jaipur to see their ailing daughter, they to their shock, on return after four days, found that their belongings had been removed, the portion had been locked and they were treated harshly and abusively. And that too by his family members. What must have been his feeling is not easy to comprehend but as said by Shakespeare in King Lear, 'how sharper than is serpent tooth it is to have a thankless child'. Failing to understand the, 'cause in Nature that make these hard hearts', the appellant approached the criminal court by way of proceedings under Sections 107 and 145 Criminal Procedure Code. He also filed a civil suit for injunction in which status quo order was granted. But status quo of what? He had already been thrown out of possession. It is not necessary to comment on the merits of these proceedings. However, proceedings under Section 107 were dropped, and in our opinion rightly, as the nature of these proceedings 'are of preventive justice' as held by this Court in *Madhu Limaye & another v. Sub-Divisional Magistrate, Monghyr & others*, AIR (1971) SC 2486. It is to be invoked when any person is likely to commit a breach of peace or disturb public tranquillity. But the order dropping the proceedings under Section 107 led the Sub-Divisional Magistrate to drop the proceedings under Section 145 Cr. P.C. as the proceedings under Section 107 having been dropped there was no apprehension of breach of peace. The High Court while agreeing with this reasoning added that the appellant having sought civil remedy the proceedings under Section 145 could not be continued.

G True, a suit or remedy in civil court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal court as observed by this Court in *Ram Sumer Puri Mahant v. State of U.P. and others*, AIR (1985) SC 472, 'particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplic-

ty of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.' The normal rule is as stated by the Court in *Puri's* case. But that was a suit based on title. And that could be decided by civil court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognisance under Section 145 Cr.P.C. Neither the High Court nor the Sub-Divisional Magistrate cared to ascertain if the respondent had any claim to lawfully prevent the appellant from entering into his own house. The proceedings under Section 107 are for public peace and tranquillity whereas under Section 145 relates to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings under Section 107 could not furnish foundation for dropping the proceedings under Section 145. Nor the law laid down in *Puri's* case could result in rejecting the application filed under Section 145 of the Cr. P.C. There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant had sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In law, therefore, the order passed by two courts below cannot be maintained.

In equity and justice the appellant has still stronger case. On own showing of the respondent the property is ancestral. The behaviour of the son is cruel and unjust. The learned counsel for the respondent during arguments stated that the son was willing to keep his father with him. What a charitably disposed son the respondent appears to be. He is willing to permit the father to live with him but not agreeable to permit him to occupy a separate portion which was in his possession. In the light of the averments made by the son in the affidavit filed in this Court and the alleged misbehaviour by him and his family members this appears to be only an excuse for preventing the father from living in peace in the end of his life.

In the circumstances we allow this appeal, set aside the order passed

- A by the High Court and the Magistrate dismissing the application filed under Section 145 Cr.P.C. and direct that the appellant shall be placed in possession of the green portion forthwith, shown in the map filed by the appellant the correctness of which was not disputed even if third party interest had been created with the help of the police, if necessary. We hope.
- B that the respondent shall not create any further hindrance in peaceful living of his father. The map filed by the appellant is made a part of this order. Any observation that has been made shall not be taken as binding in any civil dispute between parties.

M.M.

Appeal allowed.