

Jawali wd/o of Teja Singh v. State of Punjab and others
(M. M. Punchhi, J.)

case, the view of the learned Chief Judicial Magistrate in holding that when the marriage had taken place on 10th May, 1982, and the present complaint was filed on 9th May, 1984, not within one year, and was clearly barred by time, is unsustainable in law. For these reasons, the impugned order deserves to be and is hereby quashed. Since the view of the learned Magistrate expressed in the regard is inter-twined with the view which he has taken regarding other offences complained of in the complaint, the entire order needs to be and is hereby quashed, leaving it open to the learned Magistrate to apply his mind afresh and take proceedings therefore, in accordance with law. The complainant through her counsel is directed to put in appearance before the Court on August 12, 1985.

N.K.S.

Before M. M. Punchhi, J.

JAWALI, WD/O TEJA SIGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Criminal Misc. No. 2338-M of 1985.

July 23, 1985.

Code of Criminal Procedure (II of 1974)—Section 145—Proceedings under Section 145 taken in respect of a certain property—Magistrate directing the receiver to take possession of the said property—Receiver reporting that dispute between the parties in respect of the property pending in Civil Court—Magistrate vacating section 145 proceedings in view of the pending suit—Order of Magistrate—Whether valid—Jurisdiction of the Magistrate under Section 145 whether ceases on account of the pending civil suit.

Held, that no universal principle can be spelled out that in every case when a matter has gone to the civil court criminal proceedings must automatically end. For if this were to happen it would be putting premium over civil courts than criminal courts. That is an undesirable result. Multiplicity of litigation is not to be encouraged and there should be no public wastage of time over meaningless and parallel litigation. It is thus the essence of the matter which is to be seen and not the form. As such the order

of the Magistrate vacating the proceedings under Section 145 of the Code of Criminal Procedure, 1974, on account of the pending civil suit is without jurisdiction and liable to be set aside.

(Para 6)

Petition under Section 482 Cr. P. C. praying that through this petition that the impugned order passed by the S. D. M. Rajpura, be quashed by this Hon'ble Court.

It is further prayed that the operation of the impugned order be stayed and the status quo as to the possession of the land be maintained till the case is finally decided by this Hon'ble Court.

J. K. Sharma, Sr. Advocate, for the Petitioner.

G. S. Sandhu, Advocate, for Respondents Nos. 2 to 4.

JUDGMENT

M. M. Punchhi, J.

(1) Admitted and disposed of simultaneously.

(2) A piece of agricultural land situated in village Chamaru, fully detailed in the order of the Sub Divisional Magistrate, Rajpura, became the subject matter of dispute between the parties under section 145, Criminal Procedure Code. After passing the preliminary order under section 145(1), Criminal Procedure Code, the learned Sub Divisional Magistrate appointed Naib Tehsildar, Rajpura as the receiver and ordered him to take possession thereof. The receiver reported that the matter between the parties was pending in the Civil Court. Taking aid of that fact, the learned Sub Divisional Magistrate, Rajpura on 13th November, 1984 vacated the proceedings and took the view that when the matter was in the Civil Court, he had nothing to do in the matter.

(3) The petitioner herein is a widow. The land in dispute initially belonged to Teja Singh, her husband. Respondents 2 to 4 claimed themselves to be the nephews of Teja Singh. They have staked claim to the property on the basis of a will. The widow stakes her claim on the basis of inheritance. Accordingly, she had approached the Sub Divisional Magistrate, Rajpura in order to seek protection of her position, for she was weak and defenceless against a band of people comprising the opposite party.

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(4) The respondents, on the other hand, have claimed that they had filed a suit against the widow and had got her enjoined from alienating the land in dispute. Similarly, the widow had filed a suit against them in which the learned Sub Judge had ordered maintenance of *status quo* and that order is said to be still operative.

(5) When the learned Sub-Divisional Magistrate disposed of the matter, it appears that a few precedents of this Court were placed before him but he did not take care to mention them in his order. The learned counsel for the respondents, however, places reliance on *Ram Sumer Puri Mahant v. State of U.P. and others*, (1) to contend that when the matter was in the Civil Court, proceedings under section 145, Criminal Procedure Code, did not lie. It is on that anvil it is sought to oust the petitioner contending that she herself being the plaintiff in the civil suit and having obtained the order of *status quo*, there is nothing for the criminal Court to decide in the matter, much less under section 145, Criminal Procedure Code.

(6) It seems to me that the judgment of the Supreme Court afore-quoted does not lay down any universal principle, as has been sought to be spelled out. Broad facts there in were that a possessory and injunction suit had initially been filed in a Civil Court and the said suit had been dismissed. An appeal had been taken against that decision. It was pending disposal before the appellate Court. Obviously by the dismissal of the suit, one Court had adjudicated upon the matter. Technically speaking, an appeal, being a continuation of the original suit, in a sense it would be said that civil proceedings were pending final adjudication. The impact of the judgment of the first Court, however, was that it settled matters regarding possession. The Supreme Court in those peculiar circumstances considered that parallel proceedings under section 145, Criminal Procedure Code, should not continue and thus quashed the order of the Magistrate. No such foundation is available in the instant case. The order of the *status quo*, and that too *ex parte*, only shows that the Civil Court is not yet certain as to which party is in possession. That step does not mean that the civil Court has at any point of time decided the question of possession. No universal principle can be spelled out, as said before,

(1) A.I.R. 1985 S.C. 472.

that in every case when a matter has gone to the civil Court, criminal proceedings must automatically end, or be not allowed to go on, for if this were to happen, it would be putting premium over civil Courts than criminal Courts. That is an undesirable result. Multiplicity of litigation is not to be encouraged as there should be no public wastage of time over meaningless and parallel litigation. It is thus the essence of the matter which is to be seen and not the form. Thus, I am of the considered view that in the instant case, the Sub-Divisional Magistrate, Rajpura unnecessarily and illegally shed of his jurisdiction in a case where his jurisdiction ought to have been exercised. Accordingly, this petition succeeds and the impugned order is quashed. The proceedings are restored to his file at the stage at which they were shut out. They are ordered to be continued therefrom. Parties through their counsel are directed to put in appearance before the Sub-Divisional Magistrate on 14th August, 1985.

H.S.B.

Before Surinder Singh, J.

SHARAN KUMAR,—Petitioner.

versus

SUNITA,—Respondent.

Civil Revision No. 2789 of 1985

September 21, 1985.

Hindu Marriage Act (XXV of 1955)—Section 13 B—Joint petition presented under Section 13 B—Statements of the spouses not recorded at the time of presentation of the petition—Judge adjourning the case for another six months to “rethink” over the matter—Order of Judge—Whether valid—Section 13(B)(1)—Whether envisages the recording of statements of the parties at the time of filing of the petition.

Held. that Section 13 B of the Hindu Marriage Act, 1955, makes no provision for the recording of the statements of the parties at the time of the filing of the joint petition and merely because their statements are not so recorded they could not have been denied the relief of Divorce. After the expiry of the period of six months from the first date of hearing in the joint petition the case is to be taken up as provided under sub-section (2) of Section 13 B and it is on that date that the court is to be satisfied, after hearing the parties and after making such inquiry as it thinks fit, that the marriage be