

PETITIONER:
DHARAMPAL AND ORS.

Vs.

RESPONDENT:
SMT. RAMSHRI AND ORS.

DATE OF JUDGMENT 07/01/1993

BENCH:
SAWANT, P.B.
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SAWANT, P.B.
SAHAI, R.M. (J)

CITATION:
1993 AIR 1361 1993 SCR (1) 1
1993 SCC (1) 435 JT 1993 (1) 61
1993 SCALE (1) 12

ACT:
Criminal Law:
Criminal Procedure Code, 1973:
Section 146--Attachment Order--When comes to an end--Whether Magistrate can withdraw the order when the civil court was seized of the matter--Determination of the rights of parties--Whether to be final for cessation of attachment order and its withdrawal.
Sections 397(3) and 482--Second revision application by same party--Whether could be entertained by High Court when the first appellate court has already rejected the first revision application--Whether High Court can exercise its jurisdiction when such exercise was specifically barred by the Code.

HEADNOTE:
There was a dispute between the appellants and the first respondent, regarding the possession of a house. On an application filed by the respondent under Section 145 of Criminal Procedure Code, 1973, before the Sub Divisional Magistrate, claiming ownership of the suit property, the Magistrate passed a preliminary order under Section 145 of the Code, and thereafter, made an order of attachment under Section 146 directing that the attachment would continue till the competent civil court determined the rights of the parties. On a revision filed by the appellants, the Sessions Judge granted an interim stay of Magistrate's order. Subsequently, the Revision application was dismissed. The Magistrate passed a fresh attachment order under Section 146. Once more in revision the Sessions Judge passed an order staying the fresh order of attachment. Thereafter, the appellants filed a suit for permanent injunction and also an interim injunction. The trial court dismissed the application for interim injunction. On appeal, the District Court issued an interim injunction against 1st respondent and her husband. Subsequently, the

2
Criminal Revision preferred by the appellant was dismissed by the Sessions Judge also on the ground that the civil suit was preferred by the appellant. Once again, the Magistrate passed another order attaching the property but this third

order of attachment was stayed by the Sessions Judge for a period of 15 days.

Thereafter, on an application by the appellants for withdrawal of attachment on the ground that there was no apprehension of a breach of the peace, the Magistrate order withdrawal of attachment. The Revision filed by the 1st respondent against the Magistrate's order was dismissed by the Sessions Judge.

On an application under Section 482 of the Code filed by Respondent No.1 for quashing the order withdrawing the attachment and for directing the attachment to continue, the High Court held that it was not open to the Magistrate to withdraw the attachment till the competent court had decided the matter finally and restored the attachment. Hence the appeal.

Allowing the appeal, this Court

HELD : 1.1. The determination by a competent court of the rights of the parties spoken in Section 146(1) of the Criminal Procedure Code, 1973, has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent court passes an order of interim injunction or appoints a receiver in respect of the subject-matter of the dispute pending the final decision in the suit. The moment the competent court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency between the order passed by the civil court and the order of attachment passed by the Magistrate. The proviso to sub-section (1) of Section 146 itself takes cognizance of such a situation. When a civil court passes an order of injunction or receiver, it is the civil court which is seized of the matter and any breach of its order can be punished by it according to law. Hence, on the passing of the interlocutory order by the civil court, there is no longer any likelihood of the breach of the peace with regard to the subject of dispute. Under Section 146(2) the Magistrate can withdraw the order of attachment passed by him even during the pendency of the dispute in the civil court. When the civil court appoints a receiver, the order of attachment passed by the Magistrate, necessarily

3
gives way to the order of the civil court appointing the receiver. It is only when the civil court does not appoint the receiver that the Magistrate may make arrangements for looking after the property or even appoint a receiver himself. However, even when such a receiver is appointed and the civil court subsequently appoints a receiver of its own, the Magistrate has to order the receiver appointed by him to hand over the possession of the subject in dispute to the receiver appointed by the civil court and discharge the receiver appointed by him. He has also to pass such other incidental or consequential orders as he thinks just. Such order may include an order of withdrawal of the attachment, in view of the seizure of the matter by the civil court and the consequent want of apprehension of breach of the peace. It is, therefore, not correct to say that the property continues to remain under attachment of the Magisterial order till the rights of the parties are decided finally by the competent court of law. [7G-H, 8A-C, D-F]

1,2. In the present case, the Appellate Civil Court has already passed an order of injunction against the 1st respondent and her husband by virtue of which the possession continues to be with the appellants. Therefore, the Magistrate had not erred in withdrawing the attachment. The High Court has erred in holding that the order passed by the

Sub-Divisional Magistrate withdrawing attachment was without jurisdiction. [8G-H, 6E]

2.1. Section 397 (3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. [6D]

2.2. In the instant case, admittedly, the 1st respondent had preferred a Criminal Application to the Sessions Court against the order passed by the Magistrate, withdrawing the attachment. The Sessions Judge had dismissed the said application. Hence, the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. [6C,E]

3. The Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by the Sessions Judge. None of the parties, including the Sessions Judge, realised this error on the part of the Magistrate. The Sessions Judge had also committed a patent mistake in entertaining

4

revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. [6A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 667 of 1980.

From the Judgment and Order dated 31.7.1980 of the Allahabad High Court in CrI. Misc. Appln. No. 5296 of 1979.

M.V. Goswami for the Appellants.

Vishnu Mathur, A.S. Pundir and R.C. Verma for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. The admitted facts in the present case are as follows. The suit property consists of house No. 336 of village Khonda, District Mathura. The dispute with regard to the possession of the property arose between the appellants and the respondent Ramshri. She filed an application under Section 145 of Criminal Procedure Code [Code] before the Sub Divisional Magistrate, Sadabad in which she claimed ownership of the suit property. On 31st May, 1976, the learned Magistrate passed a preliminary order under Section 145 of the Code and thereafter on 22nd April, 1977 made an order of attachment under Section 146 directing that the attachment would continue till the competent civil court determined the rights of the parties with regard to the said property. Against this order, a Revision being Cr. Revision No. 27/1977 was filed by the appellants before the Sessions Judge who by his interim order dated 23rd April, 1977 stayed operation of the learned Magistrate's order. However, before the interim stay order could be communicated, the attachment had already been effected. The learned Sessions Judge, therefore, again, by another interim dated 26th April, 1977 directed the police to restore the possession the property to the appellants from whom allegedly the possession of the property was taken. The possession was restored to the appellants on 28th April, 1977. The said Revision application was dismissed on 18th August, 1977. Though, on account of the dismissal of the Revision, the order of attachment passed by the Magistrate

revived, the learned Magistrate passed a fresh order dated 31st January, 1978 under Section 146 attaching the property in dispute. Against the said order, once more a revision being Cr. R.No. 19/1978 was preferred by the appellants to the

5

Sessions Judge who on 2nd February, 1978 passed an order staying the fresh order of attachment passed by the Magistrate.

2. Thereafter, the appellants filed a suit for permanent injunction against the 1st Respondent and her husband, and in that claimed an interim injunction against them. The trial court dismissed the application for interim injunction. Against the order of dismissal, the appellant filed an appeal to the District Court, and the appellate court by its order dated 18th May, 1978, allowed the appeal and issued an interim injunction against 1st respondent and her husband. Thereafter Cr. Revision No. 19/1978 preferred by the appellant before the Sessions Judge was dismissed on 15th June, 1978 also on the ground that the civil suit was preferred by the Appellant. Again, although the order of attachment stood revived and the order of interim injunction by the Civil Court still continued, the Magistrate on 25th July, 1978 passed another order attaching the property. Against this third order of attachment passed by the Magistrate, a revision was filed by the Appellants before the Sessions Judge and the Sessions Judge by his order dated 26th July, 1978 stayed the order of attachment issued on 25th July, 1978, upto 10th August, 1978.

On 26th July, 1978, the appellant filed an application before the Magistrate for withdrawal of attachment on the ground that there was no apprehension of a breach of the peace. On this application, on 17th October 1978, the Magistrate ordered withdrawal of attachment. Against this order, the 1st Respondent filed revision being Cr. R.No. 180/78 before the Sessions Judge who dismissed the same on 14th May, 1979.

Respondent No. 1 thereafter, preferred an application under Section 482 of the Code before the High Court for quashing the order withdrawing the attachment and directing the attachment to continue. The High Court by the impugned order took the view that it was not open to the learned Magistrate to withdraw the attachment till the competent Court had decided the matter finally and restored the attachment.

3. On these facts, two questions arise in this appeal viz. whether the High Court could entertain the second revision application in exercise of its inherent powers under Section 482 of the Code and whether the interpretation placed by the High Court on the provisions of Sections 145 and 146 of the Code is correct.

6

4. There is no doubt that the learned Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by the learned Sessions Judge. It appears that none of the parties including the Sessions Judge realised this error on the part of the Magistrate. The learned Sessions Judge had also committed a patent mistake in entertaining revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. Let that be as it is. The question that falls for our consideration now is whether the High

Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R.No. 180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397 (3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside.

5. However, since the High Court has also proceeded to interpret the provisions of Sections 145 and 146 of the Code, it has become necessary to set things right on that score as well.

We are afraid that the High Court has erred in holding that the order passed by the Sub-Divisional Magistrate on 17th October, 1978 [17.9.78 (sic.)] withdrawing attachment, was without jurisdiction. The provisions of Section 146 of the Code are clear in this respect. The Section reads as follows:

"146. Power to attach subject of dispute and to appoint receiver. (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

7
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.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate

[a] shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him:

[b] may make such other incidental or

consequential orders as may be just."

It is obvious from sub-section (1) of Section 146, that the Magistrate is given power to attach the subject of dispute "until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. The determination by a competent Court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a receiver in respect of the subject-matter of the dispute pending the final decision in the suit. The moment the competent Court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency

8

between the order passed by the civil court and the order of attachment passed by the Magistrate. The proviso to sub-section (1) of Section 146 itself takes cognizance of such a situation when it states that "Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of any breach of peace with regard to the subject of dispute". When a civil Court passes an order of injunction or receiver, it is the civil Court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the civil Court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute.

The fact that the Magistrate can withdraw the order of attachment passed by him even during the pendency of the dispute in the civil Court is made further clear by the provisions of sub-section (2) of Section 146. When the civil Court appoints a receiver, the order of attachment passed by the Magistrate necessarily gives way to the order of the Civil Court appointing the receiver. It is only when the civil Court does not appoint the receiver that the Magistrate may make arrangements for looking after the property or even appoint a receiver himself. However, even when such a receiver is appointed and the civil Court subsequently appoints a receiver of its own, the Magistrate has to order the receiver appointed by him to hand over the possession of the subject in dispute to the receiver appointed by the civil Court and discharge the receiver appointed by him. He has also to pass such other incidental or consequential orders as he thinks just. Such order may include an order of withdrawal of the attachment in view of the seizure of the matter by the civil Court and the consequent want of apprehension of breach of the peace. It is, therefore, not correct to say as held by the High Court that the property continues to remain under attachment of the Magisterial order till the rights of the parties are decided finally by the competent Court of law. That appears to be the purport of the High Court's order since in the present case the appellate civil Court has already passed an order of injunction against the 1st Respondent and her husband by virtue of which the possession continues to be with the appellants.

In this view of the matter, the Magistrate had not erred in withdrawing the attachment by his order dated 17th October, 1978.

9

6. For both these reasons, the appeal is allowed and the impugned order of the High Court is set aside. It is

necessary to add that the suit as filed by the Appellants is only for a permanent injunction. The appellants must amend the plaint for claiming also the declaration of their title to the property in question.

N.P.V.

Appeal allowed.

10

JUDIS