

Neutral Citation No. - 2023:AHC:241628  
A.F.R.

**Court No. - 90**

**Case :-** APPLICATION U/S 482 No. - 9198 of 2021

**Applicant :-** Aman Deep Singh Shishya

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** K.S. Tiwari,Amber Khanna,Raj Kumar  
Khanna,Vivek Tiwari

**Counsel for Opposite Party :-** G.A.,Pawan Kumar Shukla,Santosh  
Kumar Pandey,Sheshadri Trivedi

**Hon'ble Dinesh Pathak,J.**

1. Heard Sri Raj Kumar Khanna learned counsel for the applicant and Sri Satish Trivedi (Senior Advocate) assisted by Sri Sheshadri Trivedi learned counsel for the opposite party no.2 as well as learned A.G.A. for the State.

2. The present applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. beseeching the quashing of the order dated 04.03.2021 passed by City Magistrate, Mathura, under Section 145 (1) Cr.P.C. in Case No.35 of 2021 (Aman Deep Singh vs. Adarsh Pal Gupta) and entire proceeding of said case under Section 145 Cr.P.C.

3. Facts culled out from the record reveals that the property in question known as Hari Nikunj Ashram exist in two separate buildings situated at Sri Radha Rani Anna Kshetra, Sri Banke Bihari Colony, Vrindavan, Mathura. Police has submitted report dated 02.03.2021 with an averment that the first party (applicant herein) and the second party (contesting opposite party herein) are claiming their right, title and possession over the property in question, therefore, considering the strained situation on spot both the parties may be summoned and Ashram (property in question) may be attached till the decision with respect to the right and possession of parties over there, so that, law and order could prevail. Considering the police report, learned Magistrate, by order dated 04.02.2021, has passed preliminary order under Section 145 (1) Cr.P.C.

calling upon the parties to present their respective cases with respect to the possession and title over the property in question, which is under challenge before this Court.

4. Learned counsel for the applicant has hammered the preliminary order under Section 145 (1) Cr.P.C. on the ground of pendency of the Civil Suit No.15 of 2021 and submitted that the property in question namely Hari Nikunj Ashram is run under the supervision and control of Panchayati Akhada Nirmal. Owing to disturbance in the possession of Panchayat Akhada Nirmal created by the opposite party no.2 (second party in proceeding under Section 145 Cr.P.C.), Panchayati Akhada Nirmal along with Hari Nikunj Ashram has filed a civil suit being O.S. No.15 of 2021 dated 06.01.2021 for permanent prohibitory injunction against the opposite party no.2 herein. Considering delay in decision on the interim injunction application plaintiff has approached before this Court by moving a petition being mater Under Article 227 No.115 of 2021. Co-ordinate Bench of this Court, vide order dated 13.01.2021, has disposed of the said petition with a direction to decide the interim injunction application (7-C) within a period of one months, however, interim protection for maintaining status-quo was granted as well for a period of two months or till the decision on the aforesaid application, whichever is earlier. During pendency of the aforesaid civil suit, preliminary order dated 04.03.2021 under Section 145 (1) has been passed on the basis of police report dated 02.03.2021. Interim injunction application was rejected by order dated 09.09.2021 (Annexure-C.A.1), however, Misc. Appeal No.28 of 2021 is still pending against said rejection order. It has been emphasized that during the existence of interim order passed by Hon'ble High Court, vide order dated 13.01.2021, and pendency of the civil suit which was filed on 06.01.2021, learned Magistrate had inherent lack of jurisdiction to entertain the police report and pass preliminary order under Section 145 (1) Cr.P.C. It is further submitted that the possession of the first party (applicant herein) is evident from the Ameen

report dated 14.01.2021 submitted in the civil suit and the observation made by the trial court in its order dated 09.09.2021. It is further submitted that in the light of the fact that the civil suit was pending before the court competent and opposite party no.2 has a remedy to file an appropriate application for the possession and appoint a receiver for the purposes of protection of the property in question, there is no justification of continuing a parallel proceeding in criminal side under Section 145 Cr.P.C. In support of the his submission learned counsel for the applicant has relied upon and case of *Ram Sumer Puri Mahant (appellant) vs. State of U.P. and others (respondent)*, AIR 1985 Supreme Court 472, and *Amresh Tiwari (appellant) vs. Lalta Pradad Dubey and others (respondents)*, AIR 2000 Supreme Court 1504.

5. Per contra learned counsel for private opposite party no.2 has vehemently opposed the submissions advanced by learned counsel for the applicant and contended that mere pendency of the civil suit between the parties is not sufficient ground to drop the proceeding under Section 145 Cr.P.C. It is further contended that no interim protection has been granted to the present applicant at any stage of civil litigation, even, interim protection granted by Hon'ble High Court was vacated after two months from the date of its order i.e. 13.01.2021. In absence of any interim order or final decision from the court competent with respect to the right and title over the property in question, the initiation of proceeding under Section 145 Cr.P.C. cannot be said to be illegal. It is further contended that the applicant has still an opportunity to contest before the Magistrate concerned by way of filing their objection and adducing evidence in support of his case. Learned counsel for private opposite party has relied upon the following cases :-

**(I) *Jhunamal @ Devandas vs. State of M.P. and others, AIR 1988 Supreme Court 173;***

***(II) Sanjay Kumar vs. VI Additional District Judge, Bareilly decided by co-ordinate Bench of this court on 16.01.1996, 1996 1 AWC 277;***

***(III) Sanjay Sahai vs. State of U.P. and another decided by co-ordinate Bench of this Court vide order dated 19.11.2022 passed in application U/S 482 No.36518 of 2022.***

6. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, it is manifested that property in question is known as Hari Nikunj Ashram. Present applicant (first party) is claiming his right and title over the property in question on the basis of registered sale deed and the gift deed said to have been executed by then owners of the property in question in favour of the predecessor in the interest of the applicant herein. However, opposite party no.2 is claiming his right and title over the property in question through separate society. At this juncture, it would not be befitting to consider this aspect of the matter which relates to the right and title of the parties and the same is subjudice before the civil court in Original Suit No.15 of 2021. Admittedly, Original Suit No.15 of 2021 has been filed on 16.01.2021. However, having considered the delay in decision on the interim injunction application (7-C), present applicant has invoked the supervisory jurisdiction of this Court by way of filing a petition under Article 227 No.115 of 2021. Co-ordinate Bench of this Court vide order dated 13.01.2021 has disposed of the aforesaid petition with a direction to decide the interim injunction application (Paper No.7-C) within a period of one month, however, for a period of two months or till the decision on the interim injunction application, whichever is earlier, parties were directed to maintain status-quo. During the existence of two months protection for maintaining status-quo and the pendency of the suit, police has submitted report dated 02.03.2021, which was taken into account while passing the preliminary order under Section 145 (1) Cr.P.C. Thus, order impugned has been passed not only during pendency of the suit but also during existence of the interim order granted by this Court. Apart

from that while rejecting the interim injunction application, vide order dated 09.09.2021, learned Civil Judge (Senior Division), Mathura has made an observation acknowledging the possession of the present applicant over the property in question, however, he has refused to grant interim injunction on the ground that plaintiff/applicant has failed to prove his possession legal. Learned Civil Court might has not passed interim injunction in favour of the present applicant, however, in my considered opinion, his observation with respect to the possession of the present applicant over the property in question cannot be ignored particularly for the purposes of parallel criminal proceeding under Section 145 (1) Cr.P.C. Opposite party no.2 herein has been arrayed as defendant no.1 in the Original Suit No.15 of 2021 and he has an ample opportunity to move an appropriate application before the Civil Court to get injunction in his favour with respect to the property in question along with the counter claim to establish his legal right and title over there. On the premise of pendency of the civil suit which has already been instituted on 06.01.2021 prior to the police report dated 02.01.2021 and preliminary order dated 04.01.2021 under Section 145 (1) Cr.P.C., there is no justification to continue the parallel criminal proceeding under Section 145 Cr.P.C. to examine the possession of the parties over the property in question. In the matter of Amrish Tiwari (supra) proceeding under Section 145 Cr.P.C. was dropped by learned Magistrate considering the pendency of the civil suit, however, same was reversed by the higher court. Hon'ble Supreme Court has upheld the order passed by learned Sub-Divisional Magistrate and held that multiplicity of the litigation should be avoided as it is not in the interest of the parties and the public time would be wasted over meaningless litigation. It is further observed that when possession is being examined by the civil court and the parties are in a position to approach the civil court for adequate protection of the property during pendency of the dispute, the parallel proceeding i.e. under Section 145 Cr.P.C. should not continue. Hon'ble Supreme Court in said case has considered the ratio

decided by Hon'ble Supreme Court in the matter of Ram Sumer Puri Mahant (supra). For ready reference relevant paragraph Nos.12, 13 and 14 of the judgement passed in the case of **Amresh Tiwari (supra)** is quoted hereinbelow:-

*“12. The question then is whether there is any infirmity in the order of the S.D.M. discontinuing the proceedings under Section 145 Criminal Procedure Code. The law on this subject-matter has been settled by the decision of this Court in the case of Ram Sumer Puri Mahant v. State of U.P., reported in, (1985) 1 SCC 427: (AIR 1985 SC 472: 1985 Cri LJ 752). In this case it has been held as follows:*

*“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal Court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil Court, the Criminal Court should not be allowed to invoke its jurisdiction 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. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue.”*

*13. We are unable to accept the submission that the principles laid down in Ram Sumers case (AIR 1985 SC 472: 1985 Cri LJ 752) would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumers case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.*

14. *Reliance has been placed on the case of Jhummal alias Devandas v. State of Madhya Pradesh reported in, (1988) 4 SCC 452: (AIR 1988 SC 1973: 1989 Cri LJ 82). It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145, Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145, Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An Order of status quo had already been passed by the competent civil Court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumers case (AIR 1985 SC 472: 1985 Cri LJ 752) (supra) fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil Court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate.”*

7. In a recent judgement of Hon’ble Apex Court, viz. ***Mohd. Shakir vs. State of U.P. & others [2022 Live Law (SC) 727]***, it has been held that during pendency of civil suit qua property in question, while dropping the proceeding under Section 145 Cr.P.C., there is no justification for the learned Magistrate to record any finding or issue any interim direction. The Magistrate ought to have left all the relevant aspects for consideration of the competent civil court, without recording any finding in the matter.

8. Having careful consideration to the ratio decided by Hon'ble Supreme Court, in the matters as discussed above, in the given facts of the present case, there is no room of doubt that while the civil suit is pending between the parties with respect to the possession and title over the property in question, parties could avail appropriate remedy before the civil court concerned qua their possession and protection of the property during pendency of the suit.

9. Judgement relied upon by learned counsel for the respondent does not come in rescue to his contention. Case of *Jhunamal @ Devandas (supra)* has been distinguished by Hon'ble Supreme Court in its judgement passed in the case of *Amresh Tiwari (supra)*. In the matter of *Jhunamal @ Devandas (supra)*, after culmination of proceeding under Section 145 Cr.P.C. civil suit was filed and Hon'ble High Court has quashed the order passed under Section 145 Cr.P.C. on the ground of pendency of the civil suit. In this backdrop of the facts, Hon'ble Supreme Court has observed that concluded proceeding under Section 145 Cr.P.C. should not be set at naught merely because unsuccessful party has approached before the civil court. So far as the case of Sanjay Kumar (supra) is concerned, same is not much helpful as well to the opposite party wherein proceeding under Section 145 Cr.P.C. has been held to be valid for want of adjudicate interim injunction from the civil court. It has been observed by co-ordinate Bench of this Court in the cited case that proceeding under Section 145 Cr.P.C. should be dropped only when the civil court has passed some effective order indicating as to which of the parties was entitled to possession. Apart from that proceeding should also be dropped when civil court has appointed a receiver or has made same arrangement for maintenance of such property. But, when the civil court does not clarify the position regarding the possession of contesting parties by passing an effective order, the criminal proceeding are not to be dropped because in that case both the parties may stake their claim for the possession and the situation may lead to the breach of peace. Applying the



observation made by co-ordinate Bench of this Court in the given circumstances of the present case, I am of the opinion that while deciding the interim injunction application (Paper No.7-C), learned trial court has made unequivocal observation acknowledging the possession of the present applicant over the property in question, however, refused to grant interim order on the ground that possession is not legal. While discussing the prima-facie case and balance of convenience, learned trial court has made observation that possession of the plaintiff (applicant) is for a short period that too it was restrictive and was not peaceful. It has also been observed that possession of the applicant was not in accordance with law. Thus, learned civil court has unequivocally indicated the possession of the plaintiff (applicant herein) over the property in question that might be illegal or not peaceful. In the matter of Sandeep Sahai (supra), co-ordinate Bench of this Court has declined to exercise its inherent jurisdiction under Section 482 Cr.P.C. on the ground that the applicant in that matter had an alternative remedy to approach before the authority concerned by filing an appropriate application/objection against the preliminary order under Section 145 (1) Cr.P.C.

10. In this conspectus, as above, I am of the considered view that in the peculiar facts and circumstances of the present case wherein at the time of passing the preliminary order dated 04.05.2021 under Section 145 (1) Cr.P.C., interim order dated 13.01.2021 passed by Hon'ble High Court was in existence and civil suit was pending and, precisely, learned civil court in its order dated 0909.2020 has indicated the possession of the plaintiff over the property in question, there is no justification to keep the parties indulge in a parallel criminal proceeding as enunciated under Section 145 Cr.P.C. Ratio decided by Hon'ble Supreme Court in the matter of Amresh Tiwari is still a law of land in the matter pertaining to proceeding under Section 145 Cr.P.C. This Court found an abuse of process of court in passing the impugned preliminary order dated 04.02.2021 under Section 145 (1) Cr.P.C., therefore, to secure the ends of

justice, same is liable to be quashed. There is no need to say that the right, title and possession of the parties would be abided by the final outcome of the civil suit pending before the court competent and in case of any peculiar circumstances requiring interim protection parties can approach before the civil court for appropriate order.

11. Resultantly, instant application under Section 482 Cr.P.C. is hereby allowed and the preliminary order dated 04.02.2021 passed by City Magistrate, Mathura, under Section 145 (1) Cr.P.C. in Case No.35 of 2021 (Aman Deep Singh vs. Adarsh Pal Gupta), under challenge before this Court, is hereby quashed.

**Order Date :- 20.12.2023**

Jitendra