

A SURINDER PAL KAUR AND ANOTHER
v.
SATPAL AND ANOTHER
(Civil Appeal No. 345 of 2015)

B JANUARY 13, 2015.

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Haryana Urban (Control of Rent and Eviction) Act, 1973 – s. 13 – Eviction petition – Allowed by trial court – Dismissed by appellate court denying landlord-tenant relationship relying on the proceedings u/s 145 Cr.P.C. – High Court in revision held that proceedings u/s 145 Cr.P.C. can be relied upon in rent control proceedings – On appeal, held: The observations made in proceedings u/s 145 do not bind a Competent Court in a legal proceeding – Such observation is relevant in evidence for a limited purpose – In the present case, the proceedings u/s 145 do not relate to the relationship of landlord and tenant between the parties nor was there finding to that effect – Matter remitted to High Court for fresh adjudication – Code of Criminal Procedure, 1973 – s.145.

Allowing the appeal and remitting the matter to High Court for fresh adjudication, the Court

HELD: 1. The observations made in the proceedings drawn under Section 145 CrPC do not bind the competent court in a legal proceedings initiated before it. A decision given under Section 145 CrPC has relevance in evidence to show one or more of the following facts: (a) that there was a dispute relating to a particular property; (b) that the dispute was between the parties; (c) that such dispute led to the passing of a preliminary order under Section 145(1) CrPC or an order of attachment issued under Section 146(1) CrPC; and (d) that the Magistrate found particular party or parties in possession or fictional possession of

the disputed property. [para 11] [435-B-E]

Shanti Kumar Panda v. Shakuntala Devi 2003 (5) Suppl. SCR 98 = 2004 (1) SCC 438 – relied on.

2. In the present case, the orders passed by the Magistrate under Section 145 CrPC, and the one passed by the revisional authority, arisen out of said proceedings, do not at all relate to the relationship of the landlord and tenant between the parties, nor was there any finding or observation to that effect. What reflects from aforesaid orders is that there was dispute between two sections of the people as to the nature of the premises whether the same were part of Gurudwara or a Temple. It is not the case of the respondents that after the proceedings under Section 145 CrPC were drawn, they deposited rent with the Receiver, or any other office bearer of management committee of the temple. [para 13] [436-B-D]

3. The High Court has erred in law in dismissing the revision merely for the reason that the property was under attachment on the date of filing of the eviction petition and the Receiver was appointed in respect of the said property. It is nobody's case that the respondents were not in possession of property in question as tenants on said date. [para 14] [436-D-F]

Case Law Reference:

2003 (5) Suppl. SCR 98 relied on para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 345 of 2015.

From the Judgment and Order dated 07.05.2013 of the High Court of Punjab & Haryana at Chandigarh in C. R. No. 5330 of 2002.

A Neeraj Sharma, S. K. Gupta, Balbir Singh Gupta for the Appellants.

Vivek Sharma, Yash Pal Dhingra for the Respondents.

B The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. Leave granted.

C 2. This appeal is directed against judgment and order dated 7.5.2013, passed by the High Court of Punjab and Haryana in Civil Revision No. 5330 of 2002 (O&M) whereby said Court has dismissed the revision.

D 3. Briefly stated, the factual matrix of the case is that Rana Shiv Gopal Singh and Rani Amarjeet Kaur filed petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1963 (Act 11 of 1973) for ejection of Krishan Lal from the premises in question, i.e., House No. 8603-5, New No. 542, Block No. 6, Ambala City. After death of Rana Shiv Gopal Singh and Rani Amarjeet Kaur, present appellants were substituted as their legal heirs in the proceedings, and after E death of Krishan Lal, present respondents were impleaded as his legal representatives.

F 4. It is pleaded by the appellants that they are landlords of House No. 8603-5, New No. 452, Block No. 6, Ambala City, and respondents are their tenants. The monthly tenancy started from the first date of every Calendar month, and the rate of rent was Rs.70/- per month. It is alleged in the petition that the tenants failed to make payment of rent with effect from 1.6.1987, and committed default for 25 months. On the ground of default in payment of rent the petition for ejection was filed G in April, 1990 before the Rent Controller, Ambala City.

H 5. A written statement was filed by the original tenant Krishan Lal before the Rent Controller, disputing the relationship of landlord and tenant between the parties. It is

pleaded in the written statement that answering respondent was tenant of Deity Shivji and, as such, the appellants have no right, title and interest in the property. It is further pleaded that in the proceedings under Section 145 of the Code of Criminal Procedure, 1973 (CrPC), Tehsildar, Ambala, was appointed as Receiver. It is stated that the answering respondents have no liability to pay any sum to the appellants.

6. On the basis of the pleadings of the parties the Rent Controller framed following issues: -

(i) Whether the respondent is liable for ejection on the ground of non-payment of rent?

(ii) Whether the petition is not maintainable in the present form?

(iii) Whether the petitioners have got no locus standi to file the petition as they are neither owners nor landlord of the respondent?

7. The Rent Controller, after recording evidence and hearing the parties, accepted the case of the appellants and allowed the application for ejection of the respondents vide his order dated 22.11.1995. Aggrieved by said order, the respondents filed Rent Appeal No. 55 of 1996 before the Appellate Authority. Said authority observed that Rana Shiv Gopal Singh was an employee of management committee of a temple of Murti Shivji. After his removal from the post of Manager, he had no right and authority to collect the rent from the respondents. The appellate authority further took note of the fact that Tehsildar, Ambala, was appointed as Receiver of the property on 21.11.1988 in proceedings under Section 145 CrPC. It is further observed by said authority that Lala Fakir Chand, President of the Committee (Sabha) of Temple was handed over the premises after the attachment was withdrawn. However, the appellate authority did find that rent receipts were issued by Rana Shiv Gopal Singh and Rani Amarjeet Kaur to

A the respondents but it held that the same were issued by the appellants in the capacity of office bearers of the Management Committee of the temple, as such they cannot maintain the petition under Haryana Urban (Control of Rent and Eviction) Act, 1973 for eviction of the respondents as the same is not filed in
 B the capacity of office bearers of the Management Committee of the temple. For the above reasons, the appellate authority allowed the appeal and set aside the order of the Rent Controller.

C 8. On reversal of the order passed by the Rent Controller, the appellants challenged the order of the appellate authority in revision before the High Court on the ground that the appellate authority has wrongly relied upon the observations and findings recorded in the proceedings drawn under Section 145
 D CrPC. However, the High Court did not accept the contention that the proceedings under Section 145 CrPC have no bearing to the rent control proceedings. The High Court further observed that the appellants are only skirting the issue relating to their status as landlord. Hence this appeal by way of Special
 E Leave Petition.

F 9. On behalf of the appellants it is argued that the High Court has erred in rejecting the contention of the appellants that proceedings under Section 145 CrPC have no bearing to the rent control proceedings. It is further argued that the observations made by the authorities in the proceedings under
 G Section 145 CrPC cannot be made basis for deciding the relationship of landlord and tenant in rent control proceedings.

H 10. On the other hand, on behalf of the respondents our attention is drawn to the copy of the order dated 26.2.1992, passed by the Sub Divisional Magistrate, Ambala, in case No. 1184 registered under Section 145 CrPC (Annexure R-1 to the counter affidavit) and the revisional court's order dated 12.7.1994, passed in Criminal Revision Petition No. 4 of 1992, arisen out of the above proceedings drawn under Section 145
 CrPC. It is pointed out that on the date when the appellants filed

petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973, the property in question was lying attached, and Tehsildar was the Receiver.

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11. We have considered the rival submissions of the parties on the above point. It is settled position of law that the observations made in the proceedings drawn under Section 145 CrPC do not bind the competent court in a legal proceedings initiated before it. A decision given under Section 145 CrPC has relevance in evidence to show one or more of the following facts: -

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(a) that there was a dispute relating to a particular property;

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(b) that the dispute was between the parties;

(c) that such dispute led to the passing of a preliminary order under Section 145(1) CrPC or an order of attachment issued under Section 146(1) CrPC; and

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(d) that the Magistrate found particular party or parties in possession or fictional possession of the disputed property.

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12. In *Shanti Kumar Panda v. Shakuntala Devi*¹, this Court has held, in paragraph 15, that the reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court (except for the limited purposes enumerated above). Also, it was further held in said case that the words "competent court" as used in sub-section (1) of Section 146 of the Code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property

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1. (2004) 1 SCC 438.

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A forming the subject-matter of proceedings before the Executive Magistrate.

13. In the light of the principle of law, as above, having gone through the orders passed by the Magistrate under Section 145 CrPC, and the one passed by the revisional authority, arisen out of said proceedings, we find that the same do not at all relate to the relationship of the landlord and tenant between the parties, nor is there any finding or observation to that effect. What reflects from aforesaid orders is that there was dispute between two sections of the people as to the nature of the premises whether the same were part of Gurudwara or a Temple. It is not the case of the respondents that after the proceedings under Section 145 CrPC were drawn, they deposited rent with the Receiver, or any other office bearer of management committee of the temple.

14. In the above facts and circumstances, we are of the view that the High Court has erred in law in dismissing the revision merely for the reason that the property was under attachment on the date of filing of petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973, and the Receiver was appointed in respect of the said property. It is nobody's case that the respondents were not in possession of the property in question as tenants on said date.

15. Therefore, for the reasons, as discussed above, the appeal is allowed, and impugned order is set aside. The matter is remitted to the High Court for fresh adjudication under revisional jurisdiction. We clarify that no observations are made on the merits of the case.

16. No order as to costs.