SHAKUNTALA DEVI & ORS. A

v.

CHAMRU MAHTO & ANR.

(Criminal Appeal No. 258 of 2009)

FEBRUARY 10, 2009

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[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s. 145(6) – Application for implementation of order passed u/ 145(4) – Period of limitation – HELD: Article 137 of Limitation Act, being the residuary provision, would be applicable and since the application was filed beyond three years, High Court rightly held the same as barred by limitation – s.6 of Specific Relief Act has no application to proceedings u/s 145 of the Code – Limitation Act, 1963 – Schedule – Article 137 – Specific Relief Act, 1963 – s.6. C D

ss. 397(3) and 482 – Power of High Court to set aside order of revisional court – HELD: Doors of High Court to a litigant who lost before Sessions Judge in revision are not completely closed and in special cases bar u/s 397(3) can be lifted – Power of High Court u/s 482 is not subject to prohibition u/s 397(3). E

On an application filed u/s 145 of the Code of Criminal Procedure, 1973 by the predecessor-in-interest of the appellants stating that he was dispossessed by respondent no.1 from the lands in dispute within two months of the application, the Executive Magistrate, by his order dated 7.10.1994, declared possession of the appellants over the suit land. On 12.11.1997 the appellants filed another application for restoration of possession in pursuance of the order dated 7.10.1994. The Magistrate directed restoration of possession in favour of the F G

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A appellants. The criminal revision filed by respondent no.1 was dismissed by the Additional Sessions Judge. On a petition by respondent no. 1, the single Judge of the High Court set aside the orders of the courts below.

B It was contended for the appellants that having regard to the specific provisions of Sub-section (3) of s. 397 of the Code, the petition before the High Court was not maintainable; that the High Court misinterpretd the provisions of the Specific Relief Act, 1963 and the Limitation Act, 1963 and erred in holding the application C filed by the appellants u/s 145 (6) of the Code as barred by limitation.

Dismissing the appeal, the Court

D HELD: 1.1. The object of introduction of Sub-section (3) in s.397 of the Code of Criminal Procedure, 1973 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors of the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases E the bar u/s 397(3) could be lifted. The power of the High Court to entertain a petition u/s 482, was not subject to the prohibition under Sub-section (3) of s. 397 of the Code, and was capable of being invoked in appropriate cases. [Para 17] [95-B-C]

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Rajathi v. C. Ganesan (1999) 6 SCC 326 and *Krishnan & Anr. v. Krishnaveni & Anr.* (1997) 4 SCC 241, referred to.

2.1. The provisions of the Specific Relief Act had been misapplied by the High Court in holding that the G appellants should have come for an order u/s 145(6) of the Code within six months from the date of dispossession, as provided in s.6 of the Specific Relief Act, 1963. The said Act has no application to proceedings u/s 145 Cr.P.C. [Para 18] [95-G]

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2.2. So far as making the application for implementation of the order passed u/s 145(4) Cr.P.C. is concerned, since no period of limitation is prescribed, the same ought to have been filed under the residuary provision of Article 137 of the Limitation Act, 1963 within a period of three years from the date of the order. There is also no explanation forthcoming as to the cause of the delay. Accordingly, even if the High Court was wrong in applying the provisions of the Specific Relief Act to the facts of the case; it has taken a correct view with regard to application of Article 137 of the Limitation Act, (as the bar thereunder) cannot be avoided and the application made by the appellants for being restored to possession in terms of a declaration made more than three years before the making of the application has rightly been rejected. [Para 21 and 22] [97-E; 98-A-B]

Khudiram Mandal v. Jitendra Nath & Anr. **AIR 1952 Calcutta 713, referred to.**

Case Law Reference:

(1999) 6 SCC 326	**referred to**	**para 8**
(1997) 4 SCC 241	**referred to**	**para 9**
AIR 1952 Calcutta 713	**referred to**	**para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 258 of 2009.

From the final Judgment and Order dated 5.1.2007 of the High Court of Judicature at Patna in Crl. Misc. No. 15309 of 2005.

S.B. Sanyal, K.D. Prasad, Vishal Prasad and Satish Vig for the Appellants.

Narendra Kumar, V. Balaji, M.K. Sinha, Parekh Thakur, Gopal Singh and Chandan Kumar for the Respondents.

A The Judgment of the Court was delivered by

ALTAMAS KABIR, J.1. Leave granted.

2. This appeal arises out of the order passed by the Patna High Court on 5.1.2007 quashing the order dated 6.1.2006 B passed by the Additional Sessions Judge-cum-Fast Track Court No.5, Khagaria, in Criminal Revision No.74/2003, confirming the order dated 2.5.2003 passed by the Sub-Divisional Magistrate, Khagaria, in Misc. Case No.20(M)2/97 directing restoration of possession of the land in dispute to the C respondent herein.

3. The predecessor-in-interest of the appellants herein, one Dayanand Prasad, filed an application under Section 145 of the Code of Criminal Procedure, 1973 (hereinafter referred to D as 'the Code') being Case No.455(M)/86, *inter alia*, for restoration of possession in plot No.3580 under Khata No.725 measuring 14 katha 4 dhurs on the ground that he had been forcibly dispossessed therefrom by the Respondent No.1 herein within two months of such petition being filed.

E 4. Both the parties in the said proceeding filed their respective responses showing cause and adduced evidence, whereupon the Executive Magistrate by his order dated 7.10.1994 declared the possession of the appellants over the land in dispute. The learned Magistrate, while passing his order F on 7.10.1994 under Section 145(4) of the Code, declared as follows :-

> ".....Therefore, on careful appreciation of the evidence adduced by the witnesses of both the parties and on G perusal of the papers produced by both the sides, I have reached the conclusion that the facts stated by the First Party are true and, therefore, possession of the First Party since before the dispute is hereby declared. It *is further declared that the first party is entitled to the possession*

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over the disputed land until evicted in due course of law."

(Emphasis supplied)

5. The original petitioner Dayanand Prasad, the husband of the Appellant No.1 and the father of the Appellant Nos.2 and 3, expired in 1995. In November, 1997, the appellants herein filed Misc. Case No.20(M)2/97 before the Sub-Divisional Magistrate, Khagaria, for restoration of possession in pursuance of the order of the Executive Magistrate under Section 145(4) of the Code on 7.10.1994. Allowing the said Misc. Case the Sub-Divisional Magistrate, Khagaria, passed an order under Section 145(6) of the Code on 2.5.2003 directing restoration of possession of the lands in question in favour of the appellants herein.

6. On 26th May, 2003, the respondent filed Criminal Revision No.74 before the learned Sessions Judge, Khagaria questioning the order passed by the Sub-Divisional Magistrate on 2.5.2003 under Section 145(6) of the Code. The Additional Sessions Judge- cum-F.T.C.No.5, Khagaria, dismissed the Criminal Revision and confirmed the order of the Sub-Divisional Magistrate, Khagaria. Against the said order of the Additional Sessions Judge, the respondent filed Criminal Misc. Case No.15309/2005 before the Patna High Court, which allowed the said Misc. Case and set aside the orders passed by the Sub-Divisional Magistrate and the Sessions Judge, Khagaria. The said order of the Single Judge of the Patna High Court dated 05.01.2007 is the subject matter of challenge in the instant appeal.

7. Appearing in support of the appeal, Mr. S.B. Sanyal, learned Senior Advocate, firstly contended that having regard to the specific provisions of Sub-section (3) of Section 397 of the Code, the revisional application before the Patna High Court at the instance of the respondent was not maintainable. Mr. Sanyal urged that the High Court had exercised its jurisdiction erroneously in entertaining a second revision, which was barred

A under Sub-section (3) of Section 397 of the Code, in purported exercise of its inherent powers under Section 482 of the Code.

8. In support of his submission, Mr. Sanyal referred to the decision of this Court in *Rajathi v. C. Ganesan* [(1999) 6 SCC 326]. The said decision was rendered in connection with proceedings under Section 125 of the Code. The said petition having been allowed, the husband went in revision to the Court of Sessions, which dismissed the revision and confirmed the order of the Magistrate. The husband then filed a petition under Section 482 of the Code in the High Court, which was allowed by a learned Single Judge who, by his impugned order, set aside the orders passed by the Judicial Magistrate and the Sessions Judge and dismissed the wife's claim for maintenance. The matter having been brought to this Court, by way of Special Leave this Court held that the High Court had erroneously exercised its powers under Section 482 of the Code which powers were not a substitute for a second revision under Sub-section (3) of Section 397 of the Code. This Court also went on to observe that the very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

9. In addition to the above, Mr. Sanyal also relied on the decision of a Three Judge Bench of this Court in *Krishnan & Anr. v. Krishnaveni & Anr.* [(1997) 4 SCC 241], wherein this Court had held that having regard to the provisions of Section 397(3) of the Code, a second revision before the High Court after dismissal of the first one by the Court of Sessions is barred. While holding as above, this Court also observed that despite the said bar, the inherent power of the High Court under Section 482 of the Code was still available but such power had to be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. In fact, the sentiment expressed in this decision was also referred and relied upon by this Court in later decisions

referred hereinabove. A

10. Mr. Sanyal then submitted that the High Court had erroneously proceeded to consider matters which were of no relevance to the facts at issue in the instant case. He urged that on a completely incorrect interpretation of the provisions B of the Specific Relief Act and the Limitation Act the High Court had proceeded to allow the respondent's application for quashing of the order passed by the Additional Sessions Judge, Khagaria, on 6.1.2006. Mr. Sanyal urged that Section 4 of the Specific Relief Act makes it quite clear that the C provisions of the Act would be available only with regard to civil matters and not to criminal proceedings. He urged that by misapplying the provisions of the Specific Relief Act, the High Court relied on Section 6 thereof, which specifies a period of six months within which a person wrongfully dispossessed D could file a suit for restoration of possession which was to be disposed of in a summary manner. The High Court also took note of the submissions made on behalf of the respondent that if regard was to be had to Article 137 of the Limitation Act, the period of limitation to enforce an order of the Court would be three years and since the application for enforcement of the E Magistrate's order dated 7.10.1994 had been filed on 12.11.1997 after a lapse of three years, the proceedings and the order of the learned Magistrate were without jurisdiction.

11. Mr. Sanyal submitted that neither the provisions of the F Specific Relief Act nor the provisions of the Limitation Act had any application to the facts of this case and that the case of the appellants would be governed by the provisions of the Code itself and nowhere under Section 145(4) or 145(6) has any period been prescribed for enforcing an order passed under G Section 145(4) of the Code. According to Mr. Sanyal, the provision of Section 145(4) of the Code does not indicate or provide that an order for restoration of possession has to be included in the order under Section 145(4) itself. It was submitted that the same could be passed under Section 145(6) H

A of the Code after the declaration had been made under Section 145(4). Mr. Sanyal urged that after the passing of the order under Section 145(4) of the Code the appellants made several attempts to have the matter settled amicably and ultimately, when all efforts towards that end failed, the appellants were B compelled to apply to the Executive Magistrate to pass an order under Section 145(6) directing restoration of possession in favour of the appellants. Since, according to Mr. Sanyal, the provisions of the Limitation Act would not have any application to the case of the appellants, the bar of three years prescribed C therein would not be of any avail to the respondent and the High Court had proceeded erroneously in holding otherwise.

12. In support of his said submissions, Mr. Sanyal firstly referred to a Division Bench decision of the Calcutta High Court in *Khudiram Mandal v. Jitendra Nath & Anr.* [AIR 1952 D Calcutta 713], wherein, while considering a similar situation in a proceeding under Section 145 of the Code, the High Court held that if, in a case the Magistrate declares a person to be entitled to possession he was also entitled to restore possession to the party, and it was not necessary that he had E to do so by one and the same order and it was open to him to pass another order for restoration of possession on a subsequent date. It was further observed in the concurring judgment of Sinha, J., as follows :

F "In the second case, it is quite apparent that a further relief may be necessary. Merely declaring the right of a party to possess might not bring him actual possession and an order restraining the other parties from disturbing his possession would be meaningless unless he is G restored to such possession. It is because of this that the amendment of 1923 gave power to the Magistrate to restore possession. On the other hand, a party may be content with an order for a declaration and an injunction because the other party might give up possession without further trouble or is driven to institute a suit, or for a variety

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of reasons upon which we need not speculate. But I find nothing in S.145(6) which makes it mandatory that an order for restoration of possession should form an integral part of the original order and be passed at one and the same time as the original order. The final order would be in the form given in Sch.V (Form 22) and later on, when a party is unable to get possession, he can apply to the Court to act under the last part of sub-s.(6) and restore possession to him. It is somewhat of an auxiliary order and if an analogy is permitted in the nature of execution."

13. Mr. Sanyal concluded on the note that since no special circumstances had been indicated in the impugned order of the High Court, which necessitated the invocation of its powers under Section 482 of the Code, assumption of jurisdiction thereunder, despite the bar imposed under Section 397(3) of the Code, was without jurisdiction and vitiated the order passed by it. Furthermore, even the parameters within which the High Court had proceeded to allow the application under Section 482 of the Code, was wholly misconceived and the judgment of the High Court could not, therefore, be sustained.

14. Mr. Sanyal's submissions were strongly opposed by Mr. Narendra Kumar, learned Advocate appearing for the respondent. He submitted that the very assumption of jurisdiction by the Executive Magistrate under Section 145 of the Code was erroneous since the order does not record that there was any apprehension of breach of the peace to invoke the provisions of Section 145 Cr.P.C. He pointed out that a dispute of a civil nature, without any likelihood of causing a breach of the peace could not give rise to an order under Section 145 Cr.P.C. in fact, likelihood of a breach of the peace is the *sine qua non* for invocation of jurisdiction under Section 145(1) of the Code and in the absence of such apprehension, the appellants would have to take recourse to a civil action and not approach the Magistrate by way of proceedings under Section 145 of the Code. In this connection, he also submitted

A that without any positive finding by the Magistrate to the effect that the first party had been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, the Magistrate could not have passed an B order declaring the first party to be entitled to possession of the property in question until evicted therefrom in due course of law under Sub-section (6) of Section 145 of the Code. He submitted that such an order ought not to have been made by the Magistrate after a lapse of three years from the date of the C original order under Sub-section (4) of Section 145 of the Code declaring the first party to be in possession. In fact, he also submitted that the Magistrate had become *functus officio* and had no jurisdiction to pass the impugned order.

15. Mr. Narendra Kumar submitted that the respondent D had been in continuous possession of the disputed property since long before the initiation of the proceedings under Section 145, which would also be evident from the petition of the appellants herein. He pointed out that in the appeal it had been admitted that the respondent had been constructing a E house and was also living on the land.

16. He then submitted that the decision in *Dayanand's* case (supra) relied upon by Mr. Sanyal had, in fact, been overruled in *Krishnan's* case (supra) and hence, reliance upon F the judgment in Dayanand's case could not be supported. Mr. Narendra Kumar urged that while considering its earlier decision in Dayanand's case, this Court in the latter case of *Krishnan* (supra) had also observed that despite the bar of Section 397(3) of the Code, the relief contemplated under Section 482 was still available, though it was required to be G exercised sparingly. Mr. Narendra Kumar submitted that the High Court had rightly exercised its jurisdiction under Section 482 of the Code in order to do complete justice between the parties.

H 17. We have carefully considered the submissions made

on behalf of the respective parties and we see no reason to take a stand which is different from the stand that was taken both in *Dayanand's* case (supra) and *Krishnan's* case (supra). It is well settled that the object of the introduction of Sub-section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge was not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under Sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr. Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us.

18. On the factual aspect, the Magistrate came to a finding that the appellants were entitled to possession of the disputed plot. It is true that while making such declaration under Section 145(4) of the Code, the Magistrate could have also directed that the appellants be put in possession of the same. The question which is now required to be considered is whether the High Court was right in quashing the order passed by the Magistrate, which was confirmed by the Sessions Judge, on the ground that the application made by the appellants under Section 145(6) of the Code was barred firstly by limitation under Article 137 of the Limitation Act and also by virtue of Section 6 of the Specific Relief Act, 1963. We are in agreement with Mr. Sanyal that the provisions of the Specific Relief Act had been misapplied by the High Court in holding that the appellants should have come for an order under Section 145(6) of the Code within six months from the date of dispossession, as provided in Section 6 of the said Act, as the Specific Relief Act has no application to a proceeding under Section 145 Cr.P.C.

A 19. But the High Court has, however, taken a correct view with regard to the application of Article 137 of the Limitation Act to the facts of this case. The said Article is a Residuary provision which provides for a limitation of three years within which an order passed on any application for which no period B with regard to limitation is provided elsewhere in the Third Division relating to application, can be challenged. However, under Section 145 of the Code, whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the C peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court for the purpose of settling their respective claims as regards the fact of actual possession of the subject of dispute. D Sub-section (4) of Section 145 provides that the Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject matter of dispute, after perusing the statements and hearing the parties and receiving such evidence as may be produced, take such E further evidence, if he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of order made by him under sub-section (1), in possession of the subject matter of dispute. The proviso to sub-section (4) provides that if it appears to the Magistrate that any party had F been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by him or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in G possession on the date of his order under sub-section (1). Sub-section (6) empowers the Magistrate upon arriving at a decision that one of the parties is or should be treated as being, in such possession of the subject of the dispute, to issue an order declaring such party to be entitled to possession thereof H until evicted therefrom in due course of law, and when he

proceeds under the proviso to sub-section (4), he may restore to possession the party forcibly and wrongfully dispossessed.

20. According to the respondents, the provisions of Article 137 of the Limitation Act became applicable when without implementing the provisions of sub-section (4) of Section 145 immediately after it was made, the appellants had filed the application for possession of the disputed plot to be made over to them after a lapse of three years, while the period of limitation under Article 137 of the Limitation Act is three years. The High Court was persuaded by the said submission and accordingly allowed the criminal miscellaneous application filed by the respondents herein upon holding that restoration of possession had been ordered after expiry of three years which was not permissible in view of Article 137 of the Limitation Act.

21. There is no doubt that the High Court erred in applying the provisions of the Specific Relief Act to a proceeding under Section 145 Cr.P.C., but as far as making an application for implementation of the order passed under Section 145(4) Cr.P.C. is concerned, since no period of limitation is prescribed, the same ought to have been filed within a period of three years from the date of the order. While the final order in the proceedings under Section 145 Cr.P.C. was passed on 7th October, 1994, the application for implementation of the same was made on 12th November, 1997, which was beyond the period of limitation prescribed under the provisions of Article 137 of the Limitation Act.

22. The decision cited by Mr. Sanyal does not come to his aid since there is no confusion on the point that an application under Section 145(6) may be made to be put in possession of a property in respect of which the party has been declared to be entitled to possession. Such an application cannot be made as and when the person dispossessed chooses to do so. It is for such purpose that Article 137 has been pressed into service since no limitation has been prescribed in Section 145 itself to indicate as to within which time a party found to be entitled

A to possession could be put back in possession. There is also no explanation forthcoming as to the cause of such delay. Accordingly, even if the High Court was wrong in applying the provisions of the Specific Relief Act to the facts of the case, the bar under Article 137 of the Limitation Act cannot be
B avoided and the application made by the appellants for being restored to possession in terms of a declaration made more than three years before the making of the application has to be rejected.

23. In that view of the matter, the appeal is dismissed.
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R.P. Appeal dismissed.