

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.4494/2010

Shivshankar Gurjar

Vs.

State of M.P. and another

Shri Brajesh Garg, learned counsel for the applicant.

Shri G.K. Patidar, learned counsel for the respondent No.2.

ORDER

(Passed on 30/04/2015)

This application is filed under section 482 Cr.P.C. and is directed against the order passed by the learned 4th Additional Sessions Judge, Ratlam in Criminal Revision No.339/2009 dated 28.05.2010 whereby the learned Additional Sessions Judge refused to interfere in order passed by the learned Sub Divisional Magistrate in Case No.575/2006 under section 145 Cr.P.C. dated 30.09.2009.

2. Brief facts giving rise to this application are that the respondent No.1 - State of Madhya Pradesh filed a complaint under section 145 Cr.P.C. against the present applicant and respondent No.2. While the complaint was pending, the

present applicant filed an application for spot inspection by Commissioner. The application is Annexure - 1. The respondent No.2 filed reply to this application which is Annexure - 2. As the respondent No.2 did not raise any serious objection on the application, the same was allowed and a letter was issued to Tehsildar, Ratlam City on 02.02.2009 which is Annexure - 3, by which the learned Sub Divisional Magistrate directed the Tehsildar to inspect the spot and submit a report. Tehsildar conducted an inspection of the spot and filed his report which is Annexure - 4. As no notice was given to the present applicant, he filed an objection which is Annexure - 5. The objections were disallowed on 30.09.2009 by order Annexure - 7. Against this order a revision was filed and by the impugned order the revisional Court dismissed the application by order dated 28.05.2010 which is Annexure - 8, in which the revisional Court observed that no revision lies against the present order as this was only an interim order.

3. Aggrieved by this order, the present application is filed on the grounds, inter-alia, (i) that the order passed by the learned Sub Divisional Magistrate disallowing the objection raised by the present applicant was a non speaking order and,

therefore, liable to be set aside. (ii) The report filed by the Tehsildar is beyond his jurisdiction he was not directed to suggest who is entitled to possession of the disputed shop but he recommended that the possession of the shop may be handed over to respondent No.2. (iii) That the present applicant was not given any notice before the spot inspection was conducted and on these grounds he prays that the order of the Sub Divisional Magistrate disallowing his objection may be set aside and a fresh spot inspection may be conducted.

4. I have gone through the documents and record produced by the present applicant the matter relates to dispute of possession in respect of disputed shop which is admittedly the property of a temple. When dispute arose between two parties the complaint was filed under section 145 Cr.P.C. It appears that the shop was initially in possession of tenant Pappu Khan who left the shop and handed over to third person. Thereafter, the present applicant and respondent No.2 are claiming to be a tenant in the shop and, therefore, the dispute arose. In this factual background, the real issue behind the controversy was as to who appeared to be in possession of the suit property. And to decide this issue of possession precisely the spot inspection was ordered.

5. From the note sheet filed by the present applicant which is Annexure - 4, it is apparent that on 16.02.2009 the letter of Sub Divisional Magistrate directing the Tehsildar to conduct spot inspection was received by the Tehsildar and a proceedings for spot inspection was initiated on 16.02.2009. In the order sheet written on this date, the matter was fixed on 12.03.2009. Though, the report was sought by the Sub Divisional Magistrate on or before 12.02.2008, no action was taken by the Tehsildar to seek further time for submission of the report. Surprisingly, the inspection was conducted on 25.03.2009 and from the order sheet, it is apparent that no notice was given to the present applicant before conducting the spot inspection, however, it is more surprising that no notice was given to respondent No.2 also but somehow he was present while the inspection was conducted and the report was made in his presence. While submitting the report it was also recommended by him that possession of the shop be given to respondent No.2 as he was paying the rent though, it was for the Sub Divisional Magistrate to decide on the basis of other evidence like payment of rent as to who was entitled for possession of the disputed shop. Accordingly, it is apparent that the spot inspection was conducted without giving any

notice to the present applicant and, therefore, this application deserves to be allowed and accordingly allowed.

6. The order passed by the learned Sub Divisional Magistrate dated 30.09.2009 is set aside. No order is required in respect of order passed by the learned revisional Court in Criminal Revision No.339/2009, as the same was not decided on merit.

7. It is further directed that the Sub Divisional Magistrate should appoint a Commissioner afresh and ask him to conduct spot inspection and submit his report only on the aspect that who appears to be in possession of the shop, after giving proper notice to both the parties.

8. With these directions and observations, the application stands disposed of.

(ALOK VERMA)
JUDGE