

Suppl.

S.No.118

HIGH COURT OF JAMMU & KASHMIR AND LADAKH**AT SRINAGAR****CRM No.728/2023****CrIM No.1659/2023**

Dated: 22.12.2023

Lateef Ahmad Bhat**.....Petitioner****Through: Mr.M.Sultan, Advocate.****Vs.****Qazi Khalid Mohammad & Ors.....Respondent(s)****CORAM : HON'BLE MR.JUSTICE SANJEEV KUMAR, JUDGE****ORDER****22.12.2023**

01. In this petition filed by the petitioner under Section 482 of Code of Criminal Procedure, proceeding initiated by the Chief Judicial Magistrate (CJM) under Section 145(1) and 145 (4) of Crpc in a case titled Qazi Khalid Mohammad V/S Manzoor Ahmad Lone and Others have been called in question.

02. Briefly stated, the facts leading to the filing of the instant petition are that an application under Section 145 Crpc is filed by respondent no. 1 against the petitioner herein and two others on the allegation that respondent no.1 alongwith his brothers and sisters, has inherited from their father a three storied house situated at Baghati Barzulla Khalidabad, Srinagar (the subject property). Till the death of their father, the subject property was under occupation of father, mother, respondent no.1 and his brothers and sisters. It is further alleged in the

application that upon the demise of the father of respondent no.1, the subject property was not inhabited by any legal heir, and thus remained under lock and key of respondent no.1 and his brothers and sisters. On 27th June, 2019, when respondent no.1 visited the said house, he was surprised to see that the petitioner herein alongwith two others had made a forcible entry into the house after breaking open the locks of the main door and other rooms. This was without consent of respondent no.1 or any other co-sharer. It is pleaded that when respondent no.1 objected to their entry, he was intimidated and threatened by the petitioner and his two agents thus resulting in registration of FIR against the petitioner and his two associates. Respondent no.1 further claims in the application that on enquiry, he found that the petitioner and his two associates were members of a notorious land mafia and would not leave the subject property easily. It is on the basis of these allegations and many others the petition is filed before the Chief Judicial Magistrate, Srinagar. Alongside, an application for attachment of the house, wrongfully occupied by the petitioner and his two associates, is also moved under Section Sub Section 4 of Section 145 Crpc.

03. The Chief Judicial Magistrate, Srinagar, after considering averments and after being satisfied that there was a dispute with regard to the possession of the subject property which was likely to cause breach of peace, passed a preliminary order on 03.08.2019. The parties to the application were called upon to put up their claims supported by the evidence in the shape of affidavits etc..With a view to preserve the subject property, order was passed by the Trial Court on the same date attaching the subject property. The order dated 03.08.2019, passed by Chief Judicial Magistrate, Srinagar, attaching the subject property under Section 145 (4) Crpc was called in question by the petitioner herein by way of Revision

petition filed before the Court of Principal Sessions Judge, Srinagar (“the revisional Court”). The revisional Court vide its order dated 16.03.2022 dismissed the revision petition on the ground that the order of attachment passed by the Chief Judicial Magistrate, Srinagar, was not revisable and that the petitioner had not challenged the preliminary order passed under Sub Section(1) of Section 145 Crpc. It is this order of the revisional court dated 16.03.2022, which is essentially called in question in these proceedings. Petitioner also seeks quashment of the proceedings initiated by the Chief Judicial Magistrate under Section 145 (1) and 145 (4) of Crpc.

04. Having heard learned counsel for the parties and perused the record, I am of the considered opinion that the order passed by the revisional court is perfectly legal and does not call for any interference. It is well settled that a preliminary order drawn by a Magistrate under Section 145(1) Crpc is not an interlocutory order, therefore, revisible. This is, however, not true of an order of attachment passed under Section 145(4) Crpc. A full bench of this Court by a majority of 2:1; in ***Brij Lal Chakoo Vs Abdul Ahad Nishati, 1980 CrLJ 89*** has already set at rest controversy surrounding the nature of orders that may be passed under Section 145 Crpc and their revisability in view of provisions of Section 435 (4-a) of Jammu and Kashmir Criminal Procedure Code (Now repealed).

05. Further, having regard to the allegations made by the respondent no.1 in the application filed under Section 145 (1) of the Crpc, it comes out *prima-facie* that respondent no.1 alongwith his brothers and sisters is owner in possession of the subject property and therefore, no nobody including the petitioner herein has any right, title or interest to enter into the subject property without lawful authority and consent of the respondent no.1 and his co-sharers.

06. The pleadings of the learned counsel for the petitioner that the petitioner holds the power of attorney on behalf of one of the co-sharers cannot be taken note of by the Court at this stage of the proceedings. Needless to say that the attorney holder is only authorized to act for and on behalf of the person who has executed the power of attorney in his favour. The subject property is admittedly joint property of the respondent no.1 and his co-sharers and is still un-partitioned. Till the joint property which is not under occupation of any particular co-sharer, is not partitioned by metes and bounds, no person can enter in the possession of entire house or a portion thereof on the basis of a power of attorney allegedly executed by one of the co-sharers.

07. For these reasons, I am not inclined to accept the submissions of learned counsel for the petitioner. Possession of the subject property is seriously in dispute and the Chief Judicial Magistrate, Srinagar, has, after considering the material on record drawn a preliminary order dated 03.08.2019 after recording its satisfaction about the existence of dispute in respect of the immovable property which is likely to cause breach of peace. The Chief Judicial Magistrate, has acted very prudently by directing the attachment of the subject property by exercising powers under Section 145(4) Crpc. Till the dispute with regard to the possession of the subject property is determined. The petitioner alongwith his two associates have been put on notice and called upon to put up their claim supported by affidavits in evidence. The petitioner has thus ample opportunity to contest the proceedings and place before the Chief Judicial Magistrate, Srinagar, the relevant material and evidence to prove their claim. Till the petitioner does so and the learned Magistrate is convinced that preliminary order is required to be withdrawn, he cannot be permitted to remain in unauthorized possession of the subject property.

08. Viewed from any angle, I do not find that the proceedings initiated by the Chief Judicial Magistrate, Srinagar and the order passed by him on 03.08.2019 are in any manner, contrary to law and vitiated. I am, therefore, not inclined to entertain this petition in exercise of my inherent jurisdiction vested under Section 482 Crpc.

09. This petition is found to be without merit and is accordingly dismissed.

Srinagar
22.12.2023
“ Nuzhat, Joint Reg/Secy

(Sanjeev Kumar)
Judge

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

