

**Court No. - 12**

**Case :-** APPLICATION U/S 482 No. - 10404 of 2023

**Applicant :-** Smt. Swati Srivastava

**Opposite Party :-** State Of U.P. Thru. Prin.Secy. Home And 2 Others

**Counsel for Applicant :-** Brajesh Kumar Yadav,Mayank Pandey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Singh,J.**

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.
2. This application has been filed for quashing the order dated 11.08.2023 as well as entire proceedings of Case No. 822/14.08.2023, (Alka Srivastava Vs. Swati Srivastava) under Section 145 Cr.P.C..
3. Learned counsel for the applicant submits that a partition suit filed by the applicant was pending before the Sub-Divisional Magistrate and at the same time, the application under Section 145 Cr.P.C. was moved by the private respondent. It is further submitted that an application for expediting the hearing of the said application was also moved by the private respondent on 11.08.2023. However, in place of expediting the proceeding, impugned order was passed by the Sub Divisional Magistrate for maintaining status quo on the said date. It is also submitted that the police report was also called from the concerned police station, in which, no apprehension of breach of peace was mentioned by the concerned S.H.O. It is next submitted that it came into notice of the learned counsel for the applicant today itself that the partition suit filed by the applicant has been decided by the Sub Divisional Magistrate. It is lastly submitted that the objection has already been filed by the applicant before the Sub Divisional Magistrate in the impugned proceedings, but the same is still pending.

Relying on the decision of the Hon'ble Apex Court in the case of **Mohd. Abid & Ors. vs. Ravi Naresh & Ors.** (Special Leave to Appeal (Crl.) No. 5444 of 2022 as well as

decisions of this Court in the cases of **Furhe Khan @ Fakir Mohammad Khan & Ors. Vs. State of U.P. & Ors.** (Application u/s 482 No. 6461 of 2019) and **Jitendra Kumar Vs. Anil Kumar & Anr.** (Criminal Revision No. 431 of 2000), learned counsel for the applicant submits that there is no apprehension of breach of peace and the proceedings under Section 145 Cr.P.C. is nothing but abuse of legal provisions. It is, thus, submitted that the indulgence of this Court is necessary.

4. Learned A.G.A., while opposing the prayer of the applicant, submits that in the police report, it is categorically mentioned that forcibly the construction was being raised, which clearly reveals that there is possibility of breach of peace and therefore, the judgments relied by the learned counsel for the applicant are not applicable in the present case. It is also submitted that the court below may be directed to expedite the proceedings and decide the objection of the applicant.

5. Considering the arguments advanced by the learned counsel for the applicant, learned A.G.A. and going through the contents of the application, F.I.R., impugned order and other relevant documents, it is evident that an objection has already been filed by the applicant to the application moved by the private respondent under Section 145 Cr.P.C., which is still pending. It is also evident that the police has already submitted report that construction was being raised forcefully and, therefore, it cannot be said that there is no apprehension of breach of peace.

6. In such circumstances, the application is misconceived and is, accordingly, dismissed.

7. However, Sub Divisional Magistrate concerned is directed to decide the objection filed by the applicant expeditiously without giving any unnecessary adjournments to either of the parties.

**Order Date :- 27.10.2023**

VKS