

GAHC010252282023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI
Criminal Petition No. 1211/2023

Ahmed Hussain Laskar, Age-43 years,
Son of Late Taimus Ali Laskar,
Resident of Village-Neairgram Pt-II,
P.S.- Silchar,
District:- Cachar, Assam.

.....Petitioner/First Party.

-Versus-

1. State of Assam
(Represented by the learned Public Prosecutor,
Gauhati High Court, Assam).

2. Roushanara Begum Laskar,
W/O Ramij Uddin,
Resident of Village-Neairgram Pt-II,
P.S.- Silchar,
District:- Cachar, Assam.

.....Respondents/Second Party.

Advocates for the petitioner : Mr M H Laskar,
Advocate for the respondents : Ms S H Bora, APP.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Judgment : 11.01.2024

JUDGEMENT AND ORDER (ORAL)

Heard Mr M H Laskar, learned counsel for the petitioner, Ahmed Hussain Laskar.

2. The petitioner has filed this application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC, for short), read with Article 227 of the Constitution of India, seeking quashing of the impugned order dated 26.09.2023, passed by the learned Additional Sessions Judge (FTC), Cachar, Silchar, in connection with Criminal Revision No. 106 of 2022.

3. The respondent No. 2 failed to appear on successive consecutive dates.

4. The respondent No. 1 is represented by the learned Additional Public Prosecutor, Mr M P Goswami.

5. The genesis of the case was that the petitioner has filed an application under Section 145/146(1) of the CrPC, before the Court of learned Additional District Magistrate, Cachar, Silchar (ADM, for short), alleging *inter alia*, that the petitioner inherited the parcel of land mentioned in the schedule of the petition (DL, for short) and was in peaceful possession of the said land. The respondent No. 2, without any possessory rights tried to encroach over the DL. On 19.08.2022, at about 10/10:30 AM, the respondent No. 2, along with other miscreants, armed with deadly weapons tried to encroach over the DL and collected bricks, sand, stones for construction of a PMAY house, allotted by the Government to the respondent No. 2's husband. When the petitioner along with his brother tried to resist, the respondent No. 2 and the other miscreants verbally abused and threatened them with dire consequences. Apprehending breach of peace and public tranquility, a petition under Section 145/146(1) CrPC was filed before the learned ADM, Cachar, Silchar and Case No. 679M of 2022 was registered and vide order dated 14.09.2022, passed by the learned ADM, the DL was attached under Section 146(1) of the CrPC, restraining both the parties from entering into the DL, until further order(s). The order dated 14.09.2022 is reflected hereinbelow verbatim-

ORDER

14/09/2022-

Case record is received and transfer in my file. Perused the Complt. Petition supported with affidavits along with Police report Xerox copy of documents filed by Md. Ahmed Hussain Laskar, S/O Lt. Taimuz Laskar of Neirgram Pt-II, PS Silchar, Dt-Cachar, Assam against 1. Roushnara Begum Laskar, W/O Momiz Uddin Laskar of Neirgram Pt-II, PS Silchar, Dt-Cachar, Assam.

Heard the Id. lawyer for the 1st party petitioners at length.

On perusal of police report and on hearing the submission made by the Id. lawyer for the 1st party, I am of the opinion that the dispute between the land of both parties in respect of possession of the D/L which may lead to serious apprehension of breach of peace and public tranquility in the locality.

Therefore, I am satisfied to draw up a proceeding u/s 145 Cr.P.C. and ask both the parties to file W/S in respect of claims over the D/L on the next date fixed which is also fixed for hearing.

Further, to contain any immediate threat to public peace and tranquility, I do hereby attach the D/L U/S 146(1) Cr.P.C. and restrain both the parties from entering into the D/L until further orders. Considering the emergent situation this order is passed ex-parte.

Ask local police to execute the order and maintain peace in the locality. Date fixed: 13/10/2022 for W/s by both parties.

6. Aggrieved by the order, the respondent No. 2 preferred a revision, which was registered as Criminal Revision No. 106 of 2023 and vide order dated 26.09.2023, the learned Additional Sessions Judge (FTC) was pleased to set aside the order of attachment under Section 146 (1) CrPC, observing that the learned ADM shall continue with the proceeding and was at liberty to

pass any order as per law based on the materials available before it, including attachment of the DL based on fresh Police report, if considered necessary..

7. This order is under challenge before this Court.

8. The petitioner is speculating that there will be breach of peace and public tranquility and the respondent No. 2 may not hesitate from her endeavour to encroach over the land.

9. It is also submitted that the order of attachment under Section 146 (1) of the CrPC is not amenable to revisional jurisdiction.

10. Learned counsel for the petitioner has relied on the decision of this Court in ***Indrapuri Primary Cooperative –Vs- Sri Bhabani Gogoi***; reported in ***1991 Cri. L.J. 1765***, wherein it was observed that-

“14. The next question is whether an order under section 146(1), Cr. P.C. is an interlocutory order. Subject of dispute under attachment is in custodia legis (See Deokuer vs. Sheo Prasad, AIR 1966 SC 395). Therefore, a party may be affected by the order of attachment and may cause some inconvenience or to some extent prejudice one party, but the possession of the subject of dispute during attachment will be

treated as the possession of the party finally declared to be in possession. The order under section 146 (1) is a discretionary order and it is to be presumed that the Magistrate has passed the order with due regard to the well settled principles of justice by applying his mind to the facts and circumstances of the case and pressing necessity in the interest of maintenance of peace unless it is ex facie erroneous. The order under section 146(1) is a step in the procedure. The order can be revoked at any time as is provided under the proviso to section 146 (1). In that view of the matter, the order passed under section 146(1) is an interlocutory order within the purview of section 397(2), Cr. P.C. In the above cited cases reported in Criminal Law Journal, it has been held that an order under section 146(1) is an interlocutory order and, therefore, revision is not maintainable against it. I respectfully agree with above decisions. In that view of the matter, the order under section 146(1) is an interlocutory order and no revision lies under section 397(2), Cr. P.C.”

11. In ***Siddique Ali –Vs- Md. Ali***; reported in **1993 2 Crimes(HC) 426**, it has been observed that-

“8. As held by the Supreme Court in Mohanlal Bhanwarilal (supra) and also in the Division Bench of this court in Khetra Mohan Sarkar (Supra) the proceeding under section 145 does not come to an end along with the order passed under section 146(1). Magistrate's jurisdiction to complete the proceeding under section 145 continues. The order under section 146(1) is only a step in aid for proper disposal

of the proceeding under section 145. Such order is passed in an emergent situation only to prevent breach of peace and to further justice. Such order does not effect any person's right and in view of the above, the order passed under section 146(1) cannot be said as a final order. It is only an interlocutory order. We, therefore, accordingly answer the reference as follows: (a) An order under section 146(1) Cr. P.C. passed by a Magistrate is an interlocutory order and not a final order. We send back, the case to the Hon'ble Single Judge for disposal of the case. Reference answered accordingly."

12. After considering the arguments forwarded at length, I deem it proper to quash the impugned Judgment and Order dated 26.09.2023, passed by the learned Additional Sessions Judge (FTC), Cachar, Silchar, in Criminal Revision No. 106 of 2022, setting aside the order of attachment under Section 146 (1) CrPC, passed by the learned Additional District Magistrate, Cachar, Silchar, in connection with Case No. 679 M/2022, vide order dated 14.09.2022.

13. The parties are indeed at liberty to place their case and contest the proceeding. Both the parties were directed to file written statement vide order dated 14.09.2022, in Case No. 679M/2022. The parties can appear before the learned ADM and place their case.

14. In terms of above observations, petition is disposed of.
15. No order as to cost(s).

JUDGE

Comparing Assistant