

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CRMC No. 13/2019

1. **Akhter Hussain, Age 65 years,
S/o Ghulam Shah,
R/o Village Dhak Mohalla,
Tehsil & District Doda.**
2. **Zareena Begum, Age 60 years,
W/o Akhter Hussain,
R/o Village Dhak Mohalla,
Tehsil & District Doda.**

.....Petitioner(s)

Through: Mr. F. A. Natnoo, Advocate.

Vs

1. **Merium Begum,
W/o Syed Riaz Hussain
R/o A/P Batti Mohalla Doda.**
2. **Syed Shahnaz Ahmed
S/o Syed Reyaz Ahmed
R/o Batti Mohalla,
Tehsil & District Doda.**

.....Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**ORDER
(30.12.2024)**

01. Heard Mr. F. A. Natnoo, learned counsel for the petitioners.
02. The respondent No. 1 – Merium Begum initiated proceeding under section 145 of the Code of Criminal Procedure (Cr.P.C), Svt., 1989 alleging breach of peace at the end of the petitioners, who are husband and wife. The petition was filed by the respondent No. 1 – Merium Begum before the court of District Mobile Magistrate (T), Doda on its file No. 98 of 2018 instituted on 04.08.2018.

- 03.** The said Magistrate came to draw a preliminary order in terms of an order dated 04.08.2018 and the alleged possession dispute mentioned in the petition was with respect to a shop in a building premises owned by the Municipal Committee Doda located at Bus Stand, Doda. It is at the 2nd Floor of the said Municipal Committee Doda's building premises that the shop in reference was located.
- 04.** In her petition under section 145 of the Code of Criminal Procedure (Cr.P.C), 1989, the respondent No. 1 did not identify the exact shop by its number and also its description for confirming the actual location of the shop at the 2nd Floor of the Municipal Committee Doda's building premises at Bus Stand, Doda and that is the reason that in the preliminary order drawn on 04.08.2018, the trial court of District Judicial Mobile Magistrate (T), Doda is at loss to even locate the shop in reference with respect to which the preliminary satisfaction was being drawn that a dispute with respect to possession of the said shop is likely to cause breach of peace as the respondent No. 1 was being allegedly threatened of this possession from the said shop.
- 05.** Simultaneously drawing preliminary order, the shop in reference was directed to be sealed and attached to be effected out by Tehsildar Doda pending the inquiry into the petition.
- 06.** The petitioners, in response to the said preliminary order, came to cause their appearance and submitted their affidavits and claims joining the issue which resulted in

passing of an order dated 30.10.2018 by the District Mobile Magistrate (T), Doda thereby *dismissing* the petition so filed by the respondent No. 1 – Merium Begum holding that there was no illegal dispossession of the respondent No. 1 from the shop in reference but only on the basis of a settlement and payment of Rs. 1,00,000/-.

- 07.** The attachment order dated 04.08.2018 *qua* the shop in reference came to be vacated and the Tehsildar Doda was directed to handover the possession of the shop in reference to the petitioner No. 1 – Akhter Hussain.
- 08.** Following the mandate as given in the order dated 04.08.2018, Tehsildar Doda came to de-seal the shop in reference and handover its vacant possession to the petitioner No. 1 – Akhter Hussain and to this effect a report dated 12.11.2018 of handing over of the possession of shop to the petitioners came to be duly submitted by the Tehsildar concerned.
- 09.** Against said order dated 30.10.2018, a criminal revision came to be taken before the court of learned Additional Sessions Judge, Doda by the respondent No. 1 – Merium Begum on file No. 14. Cr. Rev. 209. This criminal revision was filed on 08.11.2018 before the learned Additional Sessions Judge, Doda, who vide an interim order of said date 08.11.2018, came to stay the operation of the order dated 30.10.2018 and directed the parties to maintain *status-quo qua* the shop in reference as a result whereof acting upon a docket dated 09.11.2018, the Tehsildar Doda

came to re-seal the shop in reference without any such mandate operating in the order dated 08.11.2018 for Tehsildar Doda to do the sealing.

10. The court of learned Additional Sessions Judge, Doda in revisional jurisdiction came to intervene in the matter by a final *disposal* of the revision petition by allowing it thereby resulting in passing of a final order dated 29.11.2018 with a direction to the Magistrate below to ascertain which party was in possession of shop in reference on date of occurrence of the dispute between the respondent No. 1 and petitioners and, accordingly, to put the concerned party in possession.
11. It is this outcome of the criminal revision at the end of the learned Additional Sessions Judge, Doda which resulted in institution of present petition under section 561-A of the Code of Criminal Procedure (Cr.P.C), Svt., 1989.
12. It is in the aforesaid factual backdrop that the present petition came to be filed by the petitioners alleging that the court of learned Additional Sessions Judge, Doda has exercised the revisional jurisdiction in an unwarranted and misconceived manner rendering the order impugned illegal and that the order dated 30.10.2018 passed by the court of District Mobile Magistrate (T), Doda on file No. 98 of 2018 ought to have been maintained there being no dispute in the context of section 145 Cr.P.C and, as such, the proceedings initiated by the respondents under section 145 Cr.P.C was *per se* bad.

- 13.** The submissions made by the learned counsel for the petitioners are well founded, particularly, in view of the fact that actual allottee of the shop in reference is the petitioner No. 1 – Akhter Hussain as being a licensee of the Municipal Committee Doda as being the owner of the shop in reference and that being so a claim cannot lie in the mouth of anybody else to say that there is a dispute about possession of a shop in reference.
- 14.** Possession of the shop in reference was always that of Municipal Committee Doda and its user at the best was in favour of the petitioner No. 1 – Akhter Hussain as being a licensee and respondents, as such, could not be heard to have any claim with respect to possession of the said shop in reference. This salient aspect came to be missed by the learned Additional Session Judge, Doda and that renders the order impugned bad and deserves to be set-aside. Accordingly, the order dated 30.10.2018 of the court of District Mobile Magistrate (T), Doda on file No. 98 of 2018 shall stand restored.
- 15. *Disposed of.***

(RAHUL BHARTI)
JUDGE

JAMMU
30.12.2024
Bunty

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No