

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM (M) No. 285/2024

1. Mohd Akbar

2. Mohd Sakhi
both sons of Din Mohd.

3. Mohd Ashraf
S/o Mohd Akbar
all residence of Village Attoli,
Tehsil Mandi, District Poonch.

.....Petitioner/Appellant(s)

Through:- Mr. Rameshwar P. Sharma, Advocate

V/s

1. Union Territory of J&K through Commissioner/ Secretary
Home Department, Civil Secretariat, Jammu.

2. Tehsildar Mandi, Executive Magistrate 1st Class, Mandi.

3. Assistant Commissioner, Revenue, Poonch.

4. Mohd Rafiq S/o Abdul Kareem R/o village Attoli, Tehsil Mandi.

5. SHO, Police Station, Mandi, (Poonch) Respondent(s)

Through:- Ms. Sazia Asaf, Advocate vice
Mr. P. D Singh, Dy. AG
Mr. Ashish Sharma, Advocate

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
ORDER

13.08.2025

1. The petitioners are aggrieved by the orders passed by the Executive Magistrate, 1st Class, Tehsildar Mandi (hereinafter "the learned Magistrate"), whereby proceedings were initiated under Sections 145 and 146 of the Criminal Procedure Code, 1973 (Cr.P.C). In particular, vide the order dated 27.10.2023, the learned Magistrate attached the property which is the subject matter of the dispute, namely Khasra No. 299/244, measuring 9 kanals, situated at Village Attoli, and placed it

under the superintendence of the Station House Officer (SHO), Mandi, until the Court is satisfied that there is no likelihood of breach of peace or until the rights of the parties to possession are determined.

2. The petitioners challenge the impugned orders primarily on the ground that the learned Magistrate failed to follow the procedure prescribed under Sections 145 and 146 Cr.P.C. Section 145 Cr.P.C. provides the procedure to be followed in disputes concerning land or water that are likely to cause breach of peace. Section 145 reads as under:-

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.

- 1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.
- 2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land and the rents or profits of any such property.
- 3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.
- 4) The Magistrate shall then, without reference of the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute.

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of this order under sub-section (1).”

3. The learned Magistrate, while initiating proceedings under Section 145 Cr.P.C, proceeded to attach the property in terms of Section 146 Cr.P.C, which empowers the Magistrate to attach the subject matter of the dispute and appoint a receiver, if deemed necessary. Section 146 Cr. P.C is reproduced as under:

“146. Power to attach subject of dispute and to appoint receiver.

- 1) If the Magistrate at any time after making the order under Sub-Section (1) of section [145](#) considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section [145](#), or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof; provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.
 - 2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit. Appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908); Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any civil Court, the Magistrate—
 - a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the civil Court and shall thereafter discharge the receiver appointed by him;
 - b) may make such other incidental or consequential orders as may be just.”
4. It is to be seen as to whether the learned Magistrate adhered to the mandatory procedural requirements under Sections 145 and 146 Cr.P.C before attaching the disputed property. To find out the same, it would be proper to reproduce order which is purported to have been passed by the learned Magistrate under Section 145 Cr.P.,C. The order dated 29.05.2023 is reproduced as under:

“Order u/s 145 OF Cr.P.C

Whereas, an application duly endorsed by the Worthy Assistant Commissioner Revenue Poonch dated 06.05.2023 was presented before this Court as today on 13.05.2023 with the directions issued there under to proceed in the light of application in accordance with the relevant statutory provisions, And

Whereas, acting accordingly the Naib Tehsildar Mandi was directed to visit the spot and verify in the light of Application the factual position with regard to the land in question falling under Khasra No. 299/224 measuring 9 kanal situated at village Atolli and submit detailed factual report thereof forth with for furtherance of proceedings under law, And

Whereas, pursuant to above the Naib Tehsildar concerned submitted a detailed factual report disclosing there under that the proprietary rights were conferred under Section 4 and 8 of the Agrarian Reforms Act 1976 in the said Khasra No. upon Din Mohd S/o Mohd Rafiq which were set aside by the order issued from the Honourable Court of Additional Deputy Commissioner Poonch, And

Whereas, Naib Tehsildar Mandi has further reported that the land in question was previously recorded in the Revenue Record on the name of Abdul Karm S/o Faqir Mohd which at present has become a subject of dispute and likely to cause breach of peace, And

Whereas, Naib Tehsildar, Mandi has recommended vide his officer letter No. NTM/Misc/06 dated 18.05.2023 to initiate proceedings under chapter 10 of Cr. P.C.

Therefore, keeping in view the above narrated circumstances and provisions as laid under chapter X of Cr.P.C you (herein refer to Mohd Rafiq S/o Abdul Karim, Mohd Akbar, Mohd Sakhi Sons of Din Mohd. Mohd Ashraf S/o Mohd Akbar, all residents of Attoli) are required to attend this Court in person or by pleader on 07.06.2023 to put in written statement of your respective claims with regard to the actual possessions of subject of dispute.”

5. On perusal of the order dated 29.05.2023 purportedly passed by the learned Magistrate under Section 145 Cr.P.C, it is evident that the mandatory requirements of Section 145(1) Cr.P.C were not complied with. The order fails to record any satisfaction by the learned Magistrate regarding the existence of a dispute likely to cause breach of peace concerning the land in question within his local jurisdiction, nor does it state the grounds for such satisfaction in writing, as is statutorily required before assuming jurisdiction. The order merely

refers to an application endorsed by the Assistant Commissioner Revenue Poonch and a factual report submitted by the Naib Tehsildar Mandi, without the Magistrate's independently recording satisfaction or reasons therefor.

6. Since the learned Magistrate did not satisfy himself as mandated by Section 145(1) Cr.P.C, and did not record reasons for such satisfaction, the assumption of jurisdiction under Section 145 Cr.P.C is flawed and the impugned orders passed under Section 145 Cr.P.C cannot be sustained. Consequentially, the attachment order passed under Section 146 Cr.P.C on 27.10.2023 also falls to be set aside, as it flows from the invalid order under Section 145 Cr.P.C.
7. For the foregoing reasons, the impugned orders dated 29.05.2023 and 27.10.2023 passed by the learned Executive Magistrate, 1st Class, Tehsildar Mandi, are hereby quashed and set aside. The matter is remanded back to the learned Magistrate to consider the case afresh and pass fresh orders strictly in accordance with law.
8. The petition is disposed of accordingly.

(Vinod Chatterji Koul)
Judge

Jammu:
13.08.2025
Shafqat