



2025:AHC:157040

HIGH COURT OF JUDICATURE AT ALLAHABAD

Case :- CRIMINAL REVISION No. - 651 of 2019

Revisionist :-

Praveen Goyal @
Praveen Goenka

Versus

Opposite Party :-

State Of U.P. And 2
Others

**Counsel for
Revisionist :-**

Dev Raj Singh, Onkar Nath
Mishra, Puneet
Srivastava, Renu Srivastava

**Counsel for Opposite
Party :-**

Amit Daga, Deepakh
Kapoor, G.A.

Court No. - 88

Hon'ble Tej Pratap Tiwari, J.

1. The instant revision has been filed by the revisionist Praveen Goyal @ Praveen Goenka, son of Radhey Shyam, resident of Punjabi Colony, P.S. Naini, district Prayagraj under Section 397/401 of Cr.P.C, against the order dated 10th January, 2019, passed by the learned Sub-Divisional Magistrate, Karchhana, District Prayagraj in Case No. 16/T201902030500046/2018-19 under Section 145 Cr.P.C., (Dr. Shekhar Srivastava & Another Vs. Kamal Punjabi & Others), Police Station Naini, District Prayagraj, wherein the learned Magistrate has attached building/property No. 104/17A Chak Bhatahi, Naini, District Prayagraj consisting shops situated at ground floor of the said building, shown as 2, 3, 4, 5, 6, 7, 8 and 9 in the attached map therein.

2. The aforesaid facts arose when an application under Section 145 Cr.P.C., was filed before the Court of SDM, Karchhana, District Prayagraj. On the said application, the learned Magistrate has passed the order stating therein that the report of the Incharge Inspector, Police Station Naini dated 15th December, 2018, in which the first party Dr. Shekhar Srivastava and Kamal Punjabi etc., were having dispute pertaining to the shops situated at property No. 104/17A (ground floor) in Mohalla Chak Bhatahi, New Colony Naini, Prayagraj. In the ground floor of this building at the southern side, there are five shops and on the eastern side two shops were being used by the second party and either side stating that these shops belongs to them. It has further been mentioned in the aforesaid order that opposite party/second party, (Kamal Punjabi) etc., have not given any rent and they are stating themselves to be the owner of the said property. On inquiry, it was found that the said building/property and the shops were owned by Dr. Shekhar Srivastava etc. Because of the said shops, dispute arose, which said to be converted into breach of peace. Therefore, keeping in view such situation, the request in question was made before the learned Magistrate to attach the shop Nos. 2 to 9 under the proceedings of Section 145 read with Section 146(1) of Cr.P.C. The learned Court below has shown conscience in the order and the reasoning shown by the Court below while passing the impugned order dated 10th January, 2019 and further has attached the shops Nos. 2 to 9 of the building/property No. 104/17A (ground floor) in Mohalla Chak Bhatahi, New Colony Naini, Prayagraj. It has been further directed by the said order that the concerned Station House Officer of the police station may attach the said disputed shops and take it into the custody and further provide it to a reputed neutral person of the area. The attachment order was said to be submitted within one week.

3. A bare perusal of the records available, shows that the learned counsel for the revisionist has no interest in disposing the matter

in question. Therefore, in the interest of justice, the matter is being heard and decided herein on the basis of the grounds taken by the revisionist, along with prayer in the instant revision.

4. Following grounds have been taken by the revisionist :-

The impugned order is totally illegal, unjustified and contrary to law. The order dated 10.01.2019 passed by the learned Magistrate is patently illegal, arbitrary, mala fide, without jurisdiction and is not sustainable in the eyes of law and is liable to be quashed by this Hon'ble Court. Further it is stated that even according to the police report dated 15.12.2018 no previous complain relating to the dispute of the shop in question between the revisionist and opposite parties were received by the police nor any evidence regarding the previous dispute was appended with the police report and, therefore, apprehension of breach of peace disclosed in the police report is without any basis and that apprehension was mentioned on the behest of the opposite parties. Even according to the opposite parties and the revisionist also the dispute between the parties relates to the recovery of the rent as well as of the possession of the shop in question and, therefore, the remedy to the opposite parties were available before the Small Causes Court by means of filing the suit. There is no role of proceedings under Section 145 Cr.P.C., the entire proceedings of the case including the orders passed by the learned Magistrate being without jurisdiction are not sustainable in the eyes of law and are liable to be quashed by this Hon'ble Court. It is also stated that the learned Magistrate fixed the date as 16.01.2019 for leading the evidence by the parties of the case but the learned Magistrate passed the order under Section 146(1) Cr.P.C., ten days ago i.e. 10.01.2019. This fact sparks more than the word and goes to establish that the learned Magistrate passed the order without application of mind and under the pressure/compulsion of the opposite parties No. 2 and 3. Both the orders dated 01.01.2019 and 10.01.2019 have been passed

behind the back of the revisionist without allowing any opportunity of hearing and without opportunity of leading the evidence, thus the order aforesaid are against the principle of natural justice and are liable to be quashed by this Hon'ble Court. On the aforesaid grounds it has been prayed that this Hon'ble Court may graciously be pleased to admit and allow the present Criminal Revision and set aside the order dated 10.01.2019 passed by Sub-Divisional Magistrate, Karchhana, District Prayagraj in Case No.16/T201902030500046/2018-19 under Section 145 Cr.P.C, P.S. Naini, District Prayagraj (Dr. Shekhar Srivastava & another Vs. Kamal Punjabi & Others). It is further prayed that this Hon'ble Court may graciously be pleased to direct the court below to summon the accused/opposite parties in Case No. 16/T201902030500046/2018-19 under Section 145 Cr.P.C, P.S. Naini, District Prayagraj (Dr. Shekhar Srivastava & another Vs. Kamal Punjabi & Others) otherwise revisionist shall suffer irreparable loss.

5. In response to the aforesaid grounds taken by the revisionist by means of the instant revision, learned counsel for opposite party Nos.2 and 3 has submitted the counter affidavit, which states that the shops in question were purchased by answering opposite parties and revisionist use to pay rent of the shop in question to the answering opposite party Nos. 2 and 3, as he was paying to the earlier landlord namely Smt. Pramila Keshari. After some time the answering opposite party asked the revisionist to enhance the rent as he was paying very nominal rent to the tune of Rs. 500/- per month. After September, 2019, taking the benefit of physical handicapsy of opposite party No.2, the revisionist refused to pay the rent and in order to grab the shop in question and himself let out the shop in question to one person namely Vikas Pandey, showing himself to be the owner of the shop in question, due to which act of the revisionist, dispute arose between the parties and thus in order to maintain public peace and security, the answering

opposite parties made application before the Sub-Divisional Magistrate. Karchhana, District Prayagraj to initiate proceedings under Section 145 Cr.P.C.

6. It has been further submitted that on the application, the learned Magistrate passed an order on 10.01.2019 and attached the property in question under Section 146(1) Cr.P.C. It has further been submitted that pursuant to the order of the learned Magistrate dated 10.01.2019, process of attachment had been completed on 12.01.2019 in presence of both parties and the shops in question were given in the *supurdagi* of *Supurdgar* namely Vinod Kumar and a report to this effect has been given by the police station on 17.01.2019. A copy of recovery memo dated 12.01.2019 as well as the report dated 17.01.2019 has also been annexed with the counter affidavit.

7. As the factum of the attachment was completed before the revisionist and he is well aware of the aforesaid fact, but he has concealed the same before the Hon'ble Court at the filing of the instant criminal revision, therefore, when the attachment proceedings were completed on 12.01.2019, then this instant criminal revision is not maintainable.

8. In response to the counter affidavit filed on behalf of the opposite parties, rejoinder affidavit has been filed by the revisionist stating therein that the averments made in the counter affidavit are wholly modified, and hence are vehemently denied. Further in reply thereto, it has been submitted that revisionist regularly pay the rent to opposite party No.2 and no previous complaint relating to the dispute of the shops in question between the revisionist and the opposite party were made before the police, nor any evidence regarding previous dispute was appended with the police report. It has been further submitted that the order dated 10th January, 2019, under Section 146(1) of the Cr.P.C., has wrongly been passed by the learned Court below and

on this basis, the present revision is based on merit and deserves to be allowed.

9. Heard Mr. Amit Daga, learned counsel appearing for opposite party Nos. 2 and 3 and the learned AGA for the State. Despite repeated calls, none appeared on behalf of the revisionist side.

10. After considering rival submissions oral / written advanced by both the parties, it is clear that the primary issue for determination in the present case is, whether the impugned order dated 10.01.2019 of attachment, passed by S.D.M. is sustainable in the eyes of law or not ?

11. Before examining the legality of the said order, it is necessary to first advert to the scope of powers vested in the Executive Magistrate under Sections 145 and 146 of the Code of Criminal Procedure, 1973.

12. For invoking Section 145(1) of the Code of Criminal Procedure, it is incumbent upon the Executive Magistrate to be satisfied, either on the basis of a police report or other reliable information, that a dispute exists which is likely to result in a breach of peace in relation to any land, water, or the boundaries thereof. Upon reaching such satisfaction, and after recording the grounds for the same, the Magistrate may issue an order directing the parties concerned to submit their written statements setting forth their respective claims of possession over the said property.

13. Further, sub-section (4) of Section 145 stipulates that, after affording an opportunity of hearing to all parties and upon consideration of the evidence adduced before him, the Magistrate shall determine which of the parties was in actual possession of the disputed property on the date of the preliminary order as held in the case of **Mathuralal vs. Bhawarlal & Anr (1979) 4 SCC 665.**

14. In this regard the this Court has in **Munna Singh @ Shivaji Singh And ... vs State Of U.P. And Another 2011 (75) ACC 797** has held that-

The invoking of the emergent powers under Section 146(1) Cr.P.C. is dependant on the satisfaction of the Magistrate that it is a case of emergency and none of the parties are in possession or the Magistrate at that stage unable to decide as to which of the parties was in possession. It is only then that attachment can be resorted to. An emergency is an unforeseen occurrence or a crisis with a pressing necessity which demands immediate action. An emergent situation is one that suddenly comes to notice and is almost unexpected or unapprehended. It is a situation that requires prompt attention impelling immediate action. The action to be taken would however be dependant on the satisfaction of a Magistrate recorded under Section 145(1) Cr.P.C. that there exists an apprehension of breach of peace either on the basis of a police report or upon other information received. The order of attachment on such a dispute being brought to the notice of the Magistrate therefore is clearly linked with the right of a party to retain lawful possession. The aforesaid ingredients have to exist to allow the Magistrate to exercise his authority within his jurisdiction. Accordingly the assumption of jurisdiction is dependant on the contingency that may arise in a dispute referable to the said provisions and hence what necessarily follows that if there is an exercise for want of jurisdiction or erroneous exercise of jurisdiction, then the order on the given facts of a case may not be a mere interlocutory order. If the exercise of a power and passing of an order is questionable to the extent of touching the rights of the parties or are orders of moment, depending on the peculiar facts of individual cases, then the order in our opinion would be an intermediate nature of an order that can be subjected to a revision under Section 397 Cr.P.C. The difficulty again is that can such a list of illustrations be catalogued so as to confine the revisional jurisdiction in relation to such intermediate orders. Our obvious answer is in the light of what has been said in the case of Mohan Lal's case (supra) by the apex court that the determination of such

an issue as to whether a revision would be maintainable or not would in turn depend upon the nature of the order and the circumstances in which it came to be passed. Thus it would depend on the facts and circumstances of each separate individual case where the revising authority will have to examine as to whether the Magistrate has proceeded to exercise his judicious discretion well within his jurisdiction or has travelled beyond the same, keeping in view the various shades of litigation in such matters where the apex court and this Court has held that an intermediate order, which is not necessarily an interlocutory order, could be subjected to revision. An order not conclusive of the main dispute between the parties, but conclusive of the subordinate matters with which it deals is not a purely interlocutory order even though it may not finally adjudicate the main dispute between the parties. In our opinion therefore a revision would not be barred under Sub Section (1) of Section 397 of the Code if the orders impugned before the revising authority fall within the tests indicated hereinabove. Our answer to the question referred would be therefore in the negative, and we hold that orders passed under Sections 145(1) and 146(1) of the Code are not in every circumstance, orders simplicitor, and therefore a revision would be maintainable in the light of the observations made in this judgment depending on the facts involved in each case.

15. In the present case, the impugned order has been passed under Section 146 of the Code of Criminal Procedure. As per Section 146(1), once an order under Section 145(1) has been made, the Magistrate may, in circumstances of emergency, or upon finding that none of the parties is in possession of the subject matter in dispute, or if he is unable to satisfy himself as to which of the parties is in possession, exercise the power of attachment over the property in dispute.

16. It has been well established in law that if possession of the property is not disputed, the exercise under Section 146 Cr.P.C., consequently the proceedings under Section 145 Cr.P.C cannot be maintainable in the light of the judgment passed by the

Hon'ble Apex Court in the Case of **Ashok Kumar Vs. State of Uttarakhand and Others, 2013(3) JIC 309 (SC)**. It has been observed in paragraph No.7 as follows:

"7. We are of the view that the SDM has not properly appreciated the scope of Section 145 and 146(1) Cr.P.C. The object of Section 145 Cr.P.C. is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute."

17. A perusal of the impugned order dated 10.01.2019 reveals that the said power of attachment was exercised without recording any satisfaction regarding the possession of the parties, nor was any specific emergency situation noted which necessitated such an order. The order also does not disclose whether any preliminary order under Section 145 CrPC had been passed prior to the attachment under Section 146. Further, the Magistrate has not indicated whether he was satisfied that neither party was in possession or that it was not possible to ascertain which of them was in possession of the disputed property.

18. The impugned order equally fails to disclose the material circumstances that warranted such attachment. It neither refers to any inquiry or investigation undertaken by the learned Magistrate, nor to any evidence furnished by the parties, nor does it state that no such evidence was available before him.

19. On the contrary, the order itself records that the ownership of the disputed property vests in Dr. Shekhar Srivastava, and that the opposite party had merely defaulted in the payment of rent. This clearly indicates that there was no dispute regarding the title of the shops/properties in question. In such circumstances, the necessity of passing an order of attachment under Section 146 CrPC does not appear to arise.

20. The above order would indicate that the SDM has, in our view, wrongly invoked the powers under Section 146(1) CrPC. Under Section 146(1), a Magistrate can pass an order of attachment of the subject of dispute if it be a case of emergency, or if he decides that none of the parties was in such possession, or he cannot decide as to which of them was in possession. Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145 CrPC. It can only be read in the context of Section 145 CrPC. If after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof, held in **Mathuralal vs. Bhawarlal & Anr** (*supra*).

21. The ingredients necessary for passing an order under Section 145(1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of a breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be material on record before the Magistrate when the submission of the parties is filed, documents produced or evidence adduced.

22. We find from this case that there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the

property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Dr. Shekhar Srivastava (opposite party) is the owner of the property in question, and there is no dispute regarding the possession of the disputed property. Such possession, whether it is legal or not, is not for the SDM to decide.

23. Although it has been contended by the opposite party that the petitioner failed to disclose in his petition that the process of attachment in pursuance of the impugned order has already been carried out, this Court is of the considered view that such non-disclosure does not, in itself, divest the revisionist of his right to assail the legality of the said order. The impugned order remains amenable to revision and its validity can lawfully be examined notwithstanding the aforesaid contention.

24. Thus, the records submitted/available before this Court clearly shows that there was no eminent danger regarding the property in question on the basis of which the report of the attachment could have been passed.

25. In view of the discussion made herein above, this Court finds that the impugned order dated 10.01.2019 passed by the learned Sub-Divisional Magistrate, Karchhana, District Prayagraj in Case No. 16/T201902030500046/2018-19 under Section 145 Cr.P.C., (Dr. Shekhar Srivastava & Another Vs. Kamal Punjabi & Others), Police Station Naini, District Prayagraj held to be unsustainable as discussed herein above, therefore, the instant Criminal Revision is liable to be allowed.

26. The instant revision is **allowed**. Impugned order dated 10th January, 2019, passed by the learned Sub-Divisional Magistrate,

Karchhana, District Prayagraj, in Case No. 16/T201902030500046/2018-19 under Section 145 Cr.P.C., (Dr. Shekhar Srivastava & Another Vs. Kamal Punjabi & Others), Police Station Naini, District Prayagraj is set aside. The learned Court below is directed to rehear the matter afresh, after providing opportunity of hearing to both the parties, keeping in view the observations made above.

27. The records, if any, of the lower Court be sent back to the Court below immediately.

28. At the time of pronouncement of judgment, Sri Dev Raj Singh, learned counsel for the revisionist and Sri Harish Kumar Advocate holding brief of Sri Amit Daga, learned counsel for the opposite party Nos. 2 and 3 are present.

(Tej Pratap Tiwari,J.)

Order Date :- 4.9.2025

NSC