

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

CRM(M) No. 209/2023

Date of pronouncement: 18.04.2026

Date of uploading: 20.04.2026

Jan Mohd.

..... Petitioner(s)/Appellant(s)

Through: Mr. K. S. Puri, Advocate.

vs

Executive Magistrate 1st Class Tehsildar
Koternka and Ors.

..... Respondent(s)

Through: Ms. Nazia Fazal, Advocate vice
Mrs. Monika Kohli, Sr. AAG.
Mr. P. S. Pawar, Advocate.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER(Oral)

18.04.2026

- 01.** Petitioner has invoked inherent jurisdiction of this Court under Section 482 Cr. P. C. for the quashment of order dated 23.02.2023, passed by Tehsildar, Executive Magistrate 1st Class, Koternka [“ the trial Magistrate”] with respect to land comprised under Khasra Nos. 432 measuring 02 Kanals, 435 measuring 12 Kanals 12 Marlas and 437 measuring 04 Kanals 16 Marlas total measuring 19 Kanals 08 Marlas along with residential house situate at village Bai Numble, Tehsil Koteranka, District Rajouri, vide which the subject landed property along with residential house came to be attached in terms of Sub-section 1 of Section 146 Cr. P. C.
- 02.** Having heard learned counsels for the parties, I am of the considered view that impugned order does not sustain in the eyes of law.
- 03.** A perusal of the record reveals that an application came to be preferred by the contesting respondents against the petitioner before the trial Magistrate for attachment of the subject land and residential house on 23.02.2023 and learned trial Magistrate proceeded to invoke sub-Section 1 of Section 146 Cr. P. C. and ordered attachment of landed property along with residential house on the same day.

04. Section 146(1) Cr. P. C., for the facility of reference, is extracted below:

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.”

05. It is manifest from a plain reading of sub-Section 1 of Section 146 Cr. P. C. that until rights of the parties with respect to the person entitled to the possession is determined by a competent Court, Magistrate is vested with the jurisdiction to attach the subject of dispute only in one of the following three contingencies;
- (i). if he considers the case to be one of emergency after making an order under sub-Section 1 of Section 145; or
 - (ii). if he decides that none of the parties was then in such possession as is referred to in Section 145; or
 - (iii). if he is unable to satisfy himself as to which of them was then in such possession of subject of dispute.

06. Let us now have a look at sub-Section 1 of Section 145 Cr. P. C:

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.”

- 07.** Section 145 Cr. P. C. authorises the Executive Magistrate to take cognizance of the dispute concerning land or water or boundaries thereof, within his jurisdiction, likely to cause breach of peace and settle the same by holding an inquiry into the possession. It is different from right to title or possession. These proceedings are *quasi* civil or *quasi* criminal in nature, the purpose of which is to provide an expeditious remedy to prevent breach of peace. Pertinently, the Magistrate after taking cognizance of the dispute is obliged to confine himself to ascertain, as to which of the disputing parties was in possession of the subject of dispute. Under sub-Section 1 of Section 145, Magistrate is obliged to draw a preliminary order taking cognizance of the dispute, the necessary particulars whereof are as follows:

i) a statement that Magistrate is satisfied as to the existence of a dispute likely to cause breach of peace;

(ii) the grounds of being so satisfied;

(iii) the correct description of the property;

(iv) an order requiring the parties involved in the dispute to appear in person or by pleader within a specified date and time and put in written statement of their claims in respect of the fact of actual possession: and

(v) a further direction to produce all documentary and affidavit evidence on which they rely.

- 08.** Learned trial Court in the present case, as stated embarked upon to attach subject of dispute, including landed property and residential house on the same day, when application came to be preferred by the contesting respondents without drawing a preliminary order

envisaged under sub-Section 1 of Section 145 Cr. P. C. or deciding as to which of the parties was then in such possession of the subject of dispute, which is not permissible in law.

09. Mr. Pawar, learned counsel appearing for the contesting respondents, when confronted with the legal position has conceded that impugned order is manifestly erroneous. However, he has submitted that contesting respondents be accorded a liberty to approach the concerned Magistrate afresh and Magistrate be directed to proceed in accordance with law. His statement is taken on record.
10. In view of the above, present petition is allowed and impugned order is set aside with liberty to the contesting respondents to prefer a fresh plea in accordance with law and concerned Magistrate shall proceed, strictly as per the mandate of law.
11. Meanwhile, *status quo ante* is directed to be maintained.
12. Disposed of.

(Rajesh Sekhri)
Judge

Jammu
18.04.2026
Sushant

Whether the order is speaking? **Yes**
Whether the order is reportable? **Yes**