

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr.MMO No.635 of 2023****Reserved on: 11.08.2026****Date of Decision: 21.08.2026****Uploaded on: 21.08.2026****Seema Sharma****.....Petitioner****Versus****Vandana Sharma and Another****.....Respondents***Coram**Hon'ble Mr. Justice Sandeep Sharma, Judge.**Whether approved for reporting? **Yes.*****For the Petitioner:** Mr. Y.P. Sood, Advocate.**For the Respondents:** Mr. Jiya Lal Thakur, Advocate, for respondent No.1.

Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for State.

Sandeep Sharma, J.

By way of instant petition filed under Section 482 of the Code of Criminal Procedure (**hereinafter referred to as 'Cr.P.C.'**), prayer has been made on behalf of the petitioner to quash and set aside order dated 12.06.2023 passed by learned Sessions Judge, Mandi, Himachal Pradesh, in Criminal Revision No.07 of 2023, titled *Vandana Sharma v. Smt. Seema Sharma and Another*, whereby afore Court, while setting aside order dated 01.02.2023 passed by the learned Sub-Divisional Magistrate, Sadar, District Mandi, Himachal Pradesh, remanded the case back to the aforesaid authority with a direction to proceed in accordance with Section 274 of Cr.P.C.

2. Quintessential facts, as emerge from the pleadings as well as other material adduced on record by the respective parties, are that petitioner-Seema Sharma (**hereinafter referred to as the 'complainant'**) instituted a complaint under Section 145 Cr.P.C. for removing the nuisance, seeking necessary direction for restoration of property to the complainant. In the aforesaid complaint, it came to be averred that complainant is the owner of the house comprised in Khewat No.698/707, Khatauni No.1113/1124, Khasra Nos.2734, 2735, 2736, measuring 43.58 sq. meters, situate in Mohal Bhagwan, Mandi Town, District Mandi, Himachal Pradesh, as per copy of Jamabandi for the year 2016-17.

3. Complainant further alleged that a double-storey house having three rooms, a kitchen, and two bathrooms on the ground floor, and three rooms, a kitchen, and two bathrooms on the first floor exists on the aforesaid land, which she locked in the presence of Police. She alleged that she came to know on 20.10.2022 that respondent-Vandana Sharma, after having broken the locks of the room on the ground floor along with main entrance, forcibly entered the room of the complainant and put a lock. When complainant objected to the act of the respondent, she not only pulled her hair, but also abused her and entered into the premises forcibly. She alleged that though she reported the matter to the Police, but no action was taken and as such, she is compelled to initiate proceedings under Section 145 Cr.P.C. in the Court of the learned Sub-Divisional Magistrate.

4. Learned Sub-Divisional Magistrate, having taken note of the averments contained in the complaint as have been taken note hereinabove, passed an order dated 22.11.2020 thereby issuing notice to the respondent, who filed a reply taking preliminary objections with regard to concealment of material facts by the complainant from the Court. Respondent claimed that complainant has filed a false complaint before the Court. She alleged that FIR was registered against the complainant regarding fraudulent purchase of the property from Krishna. She alleged that complainant procured a sale deed by practicing fraud, as a result thereof, an FIR and three civil suits are pending against her in the competent Court of law challenging her title. While stating that complainant is not a resident of House No.28/9, respondent claimed that the complainant is a resident of Village Satohal and at present she is residing in House No.28/9, Bhagwan Mohalla.

5. Learned Sub-Divisional Magistrate called both the parties to produce evidence. Written documents were filed before aforesaid authority, which, after having taken note of pleadings as well as written documents adduced on record, held that respondent had dispossessed the complainant from the room on the ground floor by breaking the locks. The aforesaid authority further held that matter is sub-judice before the Court, and the Court had directed the parties to maintain status quo.

6. Vide order dated 01.02.2023, aforesaid authority directed the respondent to restore the possession to the complainant and she was further prohibited from causing disturbance to the possession of the complainant.

7. Being aggrieved and dissatisfied with the aforesaid order passed by learned Sub-Divisional Magistrate, Mandi, respondent approached the learned Sessions Judge by way of revision petition filed under Section 397(1) Cr.P.C., asserting that learned trial Court failed to follow the mandatory provisions of Section 274 Cr.P.C. as no witness was allowed to be examined.

8. Learned Sessions Judge, vide impugned order dated 12.06.2023, allowed the revision petition and set aside the order dated 01.02.2023 passed by Sub-Divisional Magistrate, with further direction to decide the matter afresh in accordance with Section 274 of Cr.P.C.

9. In the afore background, petitioner has approached this Court in the instant proceedings, praying for restoration of order dated 01.02.2023 passed by learned Sub-Divisional Magistrate after setting aside order dated 12.06.2023 passed by the learned Sessions Judge in the Criminal Revision Petition.

10. Precisely, the case of the complainant, as has been highlighted in the grounds of petition and further canvassed by Mr. Y.P. Sood, learned counsel representing the petitioner, is that learned Sessions Judge, while passing the impugned order, failed to exercise the jurisdiction as vested in him in accordance with law. Mr. Sood vehemently argued that the learned Sessions Judge has committed grave illegality and material irregularity in so far as it has come to the conclusion that the learned Sub-Divisional Magistrate has failed to follow the procedure as laid down in Section 274 of Cr.P.C., while recording evidence. He submitted that learned Sessions Judge

has, in fact, misconstrued and misappreciated the provisions of Section 145(4) of the Code of Criminal Procedure (Cr.P.C.). He submitted that there is no bar under law that evidence by way of affidavit cannot be brought on record by parties in proceedings under Section 145 of Cr.P.C. He further submitted that since no objection was taken by respondent No.1 while the evidence by way of affidavit was adduced by the petitioner, she is otherwise estopped to raise objections with regard to non-adherence of provisions under Section 274 of Cr.P.C.

11. Mr. Sood further argued that since both the parties led their evidence by way of affidavit and no objection or grievance was raised by any of the parties in so far as it pertained to leading of affidavits by parties, there was no occasion for the learned Sessions Judge to remand the case back on the ground that respondent was not afforded an opportunity to cross-examine the witness. He further submitted that learned Sessions Judge has adopted a hyper-technical approach while passing the impugned order, hence the same is required to be interfered with.

12. While referring to Section 465 Cr.P.C., Mr. Sood, learned counsel representing the complainant, attempted to argue that learned Sessions Judge has committed grave illegality while remanding back the case. He submitted that as per aforesaid provision of law, an order passed by an inferior Criminal Court cannot be reversed or altered by the Revisional Court merely on account of any error, omission, or irregularity in any inquiry under the Code of Criminal Procedure unless it has occasioned a failure of justice.

He submitted that since parties were afforded adequate opportunity of hearing, coupled with the fact that they led their evidence knowing fully-well the matter in controversy, and no plea of having caused prejudice was ever raised by respondent No. 1, nor the procedure as adopted by the learned trial Court for the purpose of recording evidence was ever objected, order passed by the learned trial Court could not have been interfered with.

13. To the contrary, Mr. Jiya Lal Thakur, learned counsel representing respondent No.1, supported the impugned order passed by the learned Sessions Judge and contended that evidence taken by the learned trial Court is in violation of Section 274 Cr.P.C., and as such, no illegality can be said to have been committed by the learned Sessions Judge while remanding the case back to the trial Court for a fresh decision.

14. I have heard learned counsel representing the parties and gone through the record of the case.

15. Precisely, the question which needs to be determined in the case at hand is ***“whether it is mandatory for a Magistrate holding an inquiry under Section 145 of Cr.P.C. to afford an opportunity to parties to cross-examine the complainant or respondent who have tendered their evidence by way of affidavit in terms of Section 145(4) Cr.P.C.?”***

16. Before exploring answer to the aforesaid question, it would be apt to take note of Section 145 Cr.P.C., which 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).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such

dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.”

17. A careful perusal of the aforesaid provision of law clearly reveals that object of Section 145 is to prevent a breach of peace, and for that end, to provide a speedy remedy between the parties before the Court for ascertaining which of them was in actual possession and to maintain the status quo until their rights are determined by the competent Court of law. Afore section requires that the Magistrate must be satisfied, before initiating proceedings, that a dispute, regarding immovable property, exists and that such a dispute is likely to cause a breach of peace. Once the Magistrate is satisfied of these two conditions, the section requires him to pass a preliminary order under Sub-Section (1), thereafter make an inquiry under Sub-Section (4), and pass a final order under Sub-Section (6). It is not necessary that at the time of passing the final order, the apprehension of breach of peace should continue to exist, rather inquiry under Section 145 is limited to the question as to who was in actual possession on the date of the preliminary order, irrespective of the rights of the parties. Under the second proviso, a party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may, for the purposes of the inquiry, be deemed to have been in possession on the date of that order. Though opposite party may, of course, prove that dispossession took place more than two months next preceding the date of that order, and in that case, the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession

was both forcible and wrongful and took place within prescribed period, that party dispossessed would be deemed to be in actual possession on the date of the preliminary order, and the Magistrate would then proceed to make his final order directing the dispossessor to restore possession, or prohibit him from interfering with the possession until the applicant is evicted in due course of law. A careful perusal of Section 145(4) Cr.P.C. reveals that the Magistrate is required to take evidence during the inquiry, which can be adduced on record by way of affidavit.

18. Admittedly, in the case at hand, Magistrate directed the parties to lead their evidence, and the parties filed their written documents and the affidavits of witnesses. However, admittedly, no opportunity of cross-examination ever came to be afforded to either of the parties.

19. At this stage, it would be apt to take note of Section 274 Cr.P.C., which deals with the manner of recording evidence in a case under Section 145 of Cr.P.C. Section 274 of Cr.P.C. reads as under:

“274. Record in summons-case and inquiries.

(1) In all summons-cases tried before a Magistrate, in all inquiries under Sections 145 to 148 (both inclusive), and in all proceedings under Section 446 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of his evidence in the language of the Court :

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.”

20. Careful perusal of the aforesaid provision of law clearly reveals that in an inquiry under Section 145 to 148 (both inclusive), Magistrate has to make a memorandum of the substance of the evidence in the language of the Court, and where it is not so done, inquiry is not as per law.

21. Admittedly, in the case at hand, learned Magistrate did not make a memorandum of the substance of the evidence in the language of the Court, rather learned Magistrate, relied upon the affidavit filed by the complainant in support of her complaint, without affording a chance to the respondent to cross-examine the witness, which is in clear violation of Section 145(4) read with Section 274 Cr.P.C.

22. At this stage, it is apt to take note of the fact that an affidavit is not evidence within the meaning of Section 3 of the Indian Evidence Act, 1872, and the same can be used as evidence only if, for sufficient reasons, the Court passes an order under Order XIX of the Code of Civil Procedure (CPC). Thus, the filing of an affidavit of one's own statement conveying in one's own favour cannot be regarded as sufficient evidence for any Court or Tribunal on the basis of which it can come to a conclusion as regards a particular fact-situation, but in case deponent is available for cross-examination and an opportunity is given to the other side to cross-examine him, the same can be relied upon. Reliance in this regard is placed upon the judgment passed by the Hon'ble Apex Court in **Ayaaubkhan Noorkhan**

Pathan v. State of Maharashtra & Others, (2013) 4 SCC 465, which read as under:

“Cross-examination is one part of the principles of natural justice:

24. A Constitution Bench of this Court in *State of M.P. v. Chintaman Sadashiva Vaishampayan*, AIR 1961 SC 1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also: *Union of India v. T.R. Varma*, AIR 1957 SC 882; *Meenglas Tea Estate v. Workmen*, AIR 1963 SC 1719; *M/s. Kesoram Cotton Mills Ltd. v. Gangadhar & Ors.*, AIR 1964 SC 708; *New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr.*, AIR 2008 SC 876; *Rachpal Singh & Ors. v. Gurmit Singh & Ors.*, AIR 2009 SC 2448; *Biecco Lawrie & Anr. v. State of West Bengal & Anr.*, AIR 2010 SC 142; and *State of Uttar Pradesh v. Saroj Kumar Sinha*, AIR 2010 SC 3131).

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Affidavit - whether “evidence” within the meaning of Section 3 of the Evidence Act, 1872:

31. It is a settled legal proposition that an affidavit is not evidence within the meaning of Section 3 of the Indian Evidence Act, 1872 (hereinafter referred to as the ‘Evidence Act’). Affidavits are therefore, not included within the purview of the definition of “evidence” as has been given in Section 3 of the Evidence Act, and the same can be used as “evidence” only if, for sufficient reasons, the Court passes an order under Order XIX of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘CPC’). Thus, the filing of an affidavit of one’s own statement, in one’s own favour, cannot be regarded as sufficient

evidence for any Court or Tribunal, on the basis of which it can come to a conclusion as regards a particular fact-situation. (Vide: *Sudha Devi v. M.P. Narayanan & Ors.*, AIR 1988 SC 1381; and *Range Forest Officer v. S.T. Hadimani*, AIR 2002 SC 1147).

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36. Therefore, affidavits in the light of the aforesaid discussion are not considered to be evidence, within the meaning of Section 3 of the Evidence Act. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such view, stands fully affirmed particularly, in view of the amended provisions of Order XVIII, Rules 4 & 5 CPC. In certain other circumstances, in order to avoid technicalities of procedure, the legislature, or a court/tribunal, can even lay down a procedure to meet the requirement of compliance with the principles of natural justice, and thus, the case will be examined in the light of those statutory rules etc. as framed by the aforementioned authorities.

23. In the afore case, Hon'ble Apex Court categorically held that cross-examination is an integral part of the principles of natural justice. Reliance is also placed upon its earlier judgment passed in ***State of M.P. v. Chintaman Sadashiva Vaishampayan***, AIR 1961 SC 1623, wherein the Apex Court held that the rules of natural justice require that a party must be given the option to produce all relevant evidence upon which he relies, and further that the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity to cross-examine the witnesses examined by that party.

24. In ***Lakshman Exports Ltd. v. Collector of Central Excise***, (2005) 10 SCC 634, Hon'ble Apex Court, while dealing with a case under

the Central Excise Act, 1944, considered a similar issue i.e. permission with respect to the cross-examination of a witness. In the said case, the assessee had specifically asked to be allowed to cross-examine the representatives of the firms concern, to establish that the goods in question had been accounted for in their books of accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. audi alteram partem.

25. In ***New India Assurance Company Ltd., v. Nusli Neville Wadia & Anr.***, AIR 2008 SC 876, Hon'ble Apex Court while considering a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, held as under:

“If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross- examine. The witness who intends to prove the said fact has the right to cross-examine the witness. This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right.”

(Emphasis added)

26. In ***K.L. Tripathi v. State Bank of India & Ors.***, AIR 1984 SC 273, Hon'ble Apex Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who

does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement.

27. The first proviso to Sub-Section (4) of Section 145 Cr.P.C. gives discretion to the Magistrate to summon and examine any person whose affidavit has been put in by a party. Before 1955, parties were only required to put in written statements of their claims as respects the fact of actual possession of the subject of dispute, and it was for the Magistrate to record at the inquiry all such evidence, oral and documentary, as may be produced by the parties. However, after the amendment of 1955, parties were required to put in such documents and produce, by putting in affidavits, the evidence of such persons as they relied upon in support of their claims, and the Magistrate was normally expected to conclude the inquiry and reach a conclusion on the basis of these documents and affidavits. However, as has been observed hereinabove, first proviso to Sub-Section (4) gives him the discretion to summon and examine any person whose affidavit has been put in by a party. Moreover, Magistrate is not expected to decide the important fact of possession on the basis of oral evidence given before him unless the same is tested by cross-examination in the presence of the parties.

28. This Court also does not find any force in the submission of learned counsel representing the petitioner that in terms of Section 465

Cr.P.C., an order passed by an inferior Criminal Court cannot be reversed or altered by the Revisional Court, however, bare perusal of the aforesaid provision of law clearly reveals that in case the order laid challenge appears to have occasioned a failure of justice, the Revisional Court can interfere.

29. Since, for the reasons detailed hereinabove, this Court is convinced that the learned Sub-Divisional Magistrate, while not affording an opportunity of cross-examination to the respondent/party, has violated the mandatory provisions of law, as such, no illegality can be said to have been committed by the learned Sessions Judge.

30. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds no illegality or infirmity in the impugned order passed by the learned Sessions Judge, and as such, the same is upheld. The present petition fails and is dismissed accordingly.

31. Learned counsel representing the parties through their counsel are directed to cause their presence before the learned Sub-Divisional Magistrate, Sadar, District Mandi, Himachal Pradesh on 09.09.2026 enabling him to proceed with the matter in terms of the directions issued by the learned Sessions Judge while passing the order impugned in the instant proceedings.

32. Since considerable time has elapsed after the initiation of proceedings under Section 145 Cr.P.C., this Court hopes and trusts that the

learned Sub-Divisional Magistrate shall do the needful expeditiously, preferably within a period of one month.

The petition stands disposed of in the aforesaid terms, along with all pending applications.

August 21, 2026
Rajeev Raturi

(Sandeep Sharma),
Judge