

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 103 OF 2012

1. Shri Dilkush Guno Velip,
Major,
Son of Guno Shaba Velip,
r/o Village Khaddem (Cordem),
Quepem, Goa.
2. Shri Ganesh Narayan Velip,
Major,
Son of Narayan Velip,
r/o Village Khaddem (Cordem),
Quepem, Goa.
3. Shri Krishna Janu Velip,
Major,
Son of Janu Velip,
r/o Village Khaddem (Cordem),
Quepem, Goa.
4. Shri Khushali Janu Velip,
Major,
Son of Janu Velip,
r/o Village Khaddem (Cordem),
Quepem, Goa.
5. Shri Kushali Laxman Velip,
Major,
Son of Laxman Velip,
r/o Village Khaddem (Cordem),
Quepem, Goa. Petitioners.

V e r s u s

1. State (through Cuncolim Police Station)
Represented by Public Prosecutor,
Margao, Goa. Original complainant/(original respondent)

- 2 (a). Shri Ram Ganesh Gaonkar
Major,
Son of Genesh Gaonkar,
r/o House No.64,
Village Khaddem (Cordem), Quepem, Goa.
- 2(b). Shri Chandrahas Sukdo Velip,
Major,
Son of Sukdo Velip,
r/o House No.68,
Village Khaddem (Cordem),
Quepem, Goa.
- 2(c). Shri Vishnu Ganesh Velip,
Major,
Son of Ganesh Velip,
r/o House No.24,
Village Khaddem (Cordem),
Quepem, Goa.
- 2(d). Shri Suhas Ganesh Velip,
Major,
Son of Ganesh Velip,
r/o Village Khaddem (Cordem),
Quepem, Goa.
- 2(e). Shri Bhamtu Fondu Velip,
Major,
Son of Fondu Velip,
r/o House No.22,
Village Khaddem (Cordem),
Quepem, Goa.
- 2(f). Shri Babi Ram Velip,
Major,
Son of Ram Velip,
r/o Village Khaddem (Cordem),
Quepem, Goa.

2(g). Shri Bhicaró Narayan Gaonkar,
Major,
Son of Narayan Gaonkar,
r/o Village Khaddem (Cordem),
Quepem, Goa.(original party no.2)/
(original petitioners) Respondents

Shri S. D. Lotlikar, Senior Advocate with Adv. Johnson
Simoes for the Petitioners.

Shri S. G. Desai, Senior Advocate with Adv. Anoop Gaonkar
for the Respondents no.1 to 14.

Mr. S.R. Rivankar, Public Prosecutor for Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 18th MARCH, 2016.

ORAL JUDGMENT:

Although the dispute between the parties has a
chequered history, the present writ petition can be disposed
of on a short count.

2. The dispute pertains to the management and
control over a Devasthan.

3. On the basis of a report by Cuncolim Police Station
proceedings under section 145 (1) of the Code of Criminal
Procedure (Cr.P.C., for short) were initiated on the file of the

Sub Divisional Magistrate, Quepem in which the petitioners are members of party no.1, while respondent nos. 2(a) to 2(g) are the members of party no.2 before the learned Sub Divisional Magistrate. It appears that the learned Sub Divisional Magistrate passed a preliminary order under section 145 (1) of Cr.P.C. recording the subjective satisfaction about the dispute between the parties being likely to cause a breach of peace. Accordingly, the parties were noticed. It further appears that on 11/2/2011, both the contesting parties filed their respective statements. It was also pointed out that some of the respondents, namely, respondents no.2(a) to 2(f) from party no.2 have filed Civil suit no.4/2011/A in the Court of Civil Judge Senior Division, Quepem concerning the subject matter and as such, parallel proceedings under section 145 of Cr.P.C. were unwarranted.

4. The learned Sub Divisional Magistrate passed an order on 16/2/2011 under section 146 (1) of Cr.P.C. which was challenged by the petitioners in Criminal Revision application no.8/2011. The criminal revision application came to be dismissed on 22/6/2011, which was challenged by the

petitioners before this Court in Criminal Writ Petition no.72/2011. That petition was disposed of by a consent order on 5/1/2012, in the following terms:

(i) The impugned order dated 22/6/2011 passed in Criminal Revision application No.08 of 2011 and 16/2/2011 passed in Case no.MAG/145/1/2011 are quashed and set aside.

(ii) The learned Deputy Collector and Sub-Divisional Magistrate, South Sub-Division, Quepem, shall consider the matter afresh and decide on the interim reliefs whether any orders are to be passed in terms of Section 146 Cr.P.C., after hearing both the parties in accordance with law.

(iii) In the meanwhile, both the parties shall maintain status quo with regard to the disputed temple until the learned Magistrate considers the matter on interim relief.

(iv) The learned Magistrate is directed to decide the matter on or before 15/2/2012.

(v) The parties are directed to appear

before the learned Magistrate on 17/1/2012 at 3.00p.m. and abide by further directions of the learned Magistrate.

(vi) All the contentions of both the parties on merits are left open.

(vii) Rule is disposed of in the above terms.

(viii) Petition stands disposed of accordingly.”

5. That on 20/1/2012, the party no.2 filed an application before the learned Sub Divisional Magistrate. The party no.2 claimed that it was necessary that the subject matter of dispute i.e. the temple of 'Shree Bhumipurush Mahamaya Devasthan' be attached until the competent court considers the rights of the parties with regard to the possession and enjoyment of the same or as to the right to perform the religious rituals therein. It was also prayed that a receiver be appointed claiming that Budhwant would be the fit and proper person to be appointed as a receiver. The application was contested, by party no.1.

6. The learned Sub Divisional Magistrate by an order dated 15/2/2012 dismissed the same. The learned Sub Divisional Magistrate inter alia found that the Party no.2 had failed to prove that Guno Shaba Velip was not holding the post of president of the said Devasthan and also as pujari of the said Devasthan. The learned Sub Divisional Magistrate further held that the party no.2 had failed to satisfy that the possession of the said Devasthan is disputed. The learned magistrate, therefore, was of the opinion that there was no emergency situation which was established. It was in these circumstances that the application was dismissed. Feeling aggrieved, the party no.2 filed Criminal Revision application no.16/2012 before the Additional Sessions Judge, FTC-I, South Goa, Margao. The learned Addl. Sessions Judge by judgment and order dated 13/9/2012 partly allowed the revision application and directed the learned Sub Divisional Magistrate to decide the application dated 20/1/2012 afresh, after giving opportunity to the parties to lead evidence and comply with the provisions of section 145 Cr.P.C.. It is this order which is the subject matter of challenge in the present petition at the instance of the petitioners (original party

no.1).

7. I have heard Shri Lotlikar, the learned Senior Counsel appearing for the petitioners and Shri Desai, the learned Senior Counsel appearing for respondent nos.2(a) to 2(g). I have also heard the learned Public Prosecutor for respondent no.1. With the assistance of the learned counsel for the parties, I have gone through the record.

8. It is submitted by the learned Senior Counsel for the petitioners that at the stage of consideration of an application under section 146 of Cr.P.C., opportunity to lead evidence is not contemplated. The learned Senior Counsel pointed out that under section 146 of Cr.P.C, there are three distinct situations in which the Executive Magistrate can act, namely, (i) it being a case of emergency or (ii) that the learned Executive Magistrate deciding 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 the subject of dispute. It is submitted that the impugned order would show

that the learned Magistrate has considered the aspect of possession as also the existence of emergency or otherwise and had rightly negated the claim of the respondents/party no.2. It is submitted that thus, it was impermissible for the learned Sessions Judge to have directed disposal of the application afresh after giving opportunity to the parties to lead evidence.

9. The learned Senior Counsel appearing for respondents/party no.2 contended that there exists a dispute as to possession and control of the Devasthan which has led to the apprehension of the breach of peace within the meaning of section 145 of Cr.P.C. It is submitted that, therefore, the learned Sessions Judge was justified in directing the learned Magistrate to decide the application afresh after giving opportunity to both the parties to lead evidence. It is submitted that the provisions as contained in section 146 of Cr.P.C do not exclude a situation where a party may be permitted to lead evidence and this cannot be termed as an inquiry into an inquiry. It is submitted that if the learned Sub Divisional Magistrate in his discretion intends

to ascertain the facts in order to record a finding under any of the three contingencies as set out above under section 146 of Cr.P.C., no prohibition can be read, in the section, to hold that an opportunity cannot be granted to the parties to lead evidence. He, therefore, submitted that the petition is without any merits.

10. I have given my anxious consideration to the rival circumstances and the submissions made. It appears that there is a long standing dispute between the parties on the management, control and possession of the Devasthan as also the rituals to be followed therein. It also appears that the party no.2 had approached the Civil Court and subsequently the suit has been withdrawn. Be that as it may, it would be necessary to consider the object, scope and ambit of the proceedings under section 145 of Cr.P.C. The said section falls in Chapter X of Cr.P.C. which pertains to maintenance of public order and tranquility. Section 145 falls in part (D) of Chapter X, which pertains to 'disputes as to immovable property'. A perusal of section 145 (1) of Cr.P.C would make it clear that it is a piece of conditional

jurisdiction conferred on a Executive Magistrate. In other words, it is only when the Executive Magistrate is satisfied from a report of a police officer or upon other information that the dispute as to immovable property is likely to cause breach of peace that he shall make an order in writing stating the grounds of he being so satisfied and calling upon the parties to put their rival claims, as to the fact of actual possession of the subject of dispute. Sub section (4) of section 145 would further make it clear that the individual rights of the parties on merits cannot be gone into and decided in a proceeding under section 145 of Cr.P.C. Sub section (5) of section 145 would make it clear that it is open to any of the parties to show that no such dispute as aforesaid exists or existed in which case the learned Magistrate is obliged to cancel the said preliminary order.

11. It can thus be seen that the jurisdiction to initiate and entertain proceedings under section 145 would be contingent on the fact of there being a real apprehension of breach of public peace, being in existence, on account of the dispute over the immovable property. The proceedings under

section 145 cannot be a platform for the parties to stake their rights and convert the same into a private dispute. It is essentially a State case and the sole object and purpose is to prevent breach of public peace on account of any dispute between the parties over an immovable property.

12. Section 146 of Cr.P.C confers powers on the magistrate to attach subject matter of dispute and to appoint a receiver in any one or more of the three contingencies as set out above which includes a situation, calling upon some emergency order being passed.

13. Turning to the present case, it is undisputed that although the learned Sessions Judge had remanded the application which was entertained by the learned Magistrate with reference to provisions of section 146 of Cr.P.C with a direction to decide the application after giving opportunity to the parties to lead evidence, has not been proceeded further before the Sub Divisional Magistrate. This is inspite of the fact that there is no stay of the said order granted by this Court. It would thus appear that although the application has

been remanded on 13/9/2012, the same is not decided as yet, notwithstanding the fact that there is no stay operating. In such circumstances, the first question would be whether the apprehension of breach of public peace shall continue and, if yes, whether there are sufficient circumstances existing for exercising of powers under section 146 of the Cr.P.C. It would be therefore, appropriate that instead of directing the Sub Divisional Magistrate to decide the interim application (under section 146 of Cr.P.C.), the learned Sub Divisional Magistrate decides the main proceedings themselves in accordance with law after hearing the parties. This is because the proceedings under section 145 and for the matter of that under section 146 of Cr.P.C. are of a summary nature, and have to be decided expeditiously. In such circumstances, the following order is passed:

Order

- (i) The impugned judgment and order dated 13/9/2012 is hereby set aside.
- (ii) The learned Sub Divisional Magistrate, is directed to decide the proceedings in Case No.MAG/145/1/2011, as expeditiously as possible and preferably within a

period of six months from today.

- (iii) It is needless to mention that if at all circumstances exist and the situation warrants, the learned Magistrate would be entitled to exercise powers under section 146 of Cr.P.C., in accordance with law.
- (iv) The parties to appear before the learned Sub Divisional Magistrate on 31/3/2016.
- (v) The writ petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.

Ap/-