

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.94 of 2014

1. Praveen Kumar Kalmegh, S/o Shri Gyandev Kalmegh, aged about 42 years, R/o Qtr. No. 2A, Road No. 8, Sector-1, Bhilai, Tahsil & Distt. Durg (C.G.)
2. Matluram Bhagat, S/o Shri Petraram Bhagat, aged about 70 years, R/o through M.K. Chouhan, Model Town, Bhilai, Thana Supela, Tahsil & Distt. Durg (C.G.)

(Revisioners)
---- Petitioners

Versus

1. Shri Satish Chandra Shukla, S/o Late A.P. Shukla, aged about 42 years, R/o Hanuman Nagar, Thana Mohan Nagar, Tahsil & Distt. Durg (C.G.)
2. Shri Aslam, S/o Shri Jamiruddin, aged about 40 years, R/o 2-B, 35/7, Bhilai Nagar, Tahsil & Distt. Durg (C.G.)
3. State of Chhattisgarh, through its Thana Prabhari, Supela, Tahsil & Distt. Durg (C.G.)
4. Sub Divisional Officer, Chawni, Tahsil & Distt. Durg (C.G.)
5. 3rd Additional District Judge (Deleted)
6. Lalchand Agrawal, S/o Late Laxminarayan Agrawal, aged about 66 years,
7. Avinash Agrawal, S/o Lalchand Agrawal, aged about 21 years,

(Respondents)

Both are R/o C/o Agrawal Traders, Nehru Road, Supela, Bhilai, Police Station Supela, Tahsil and District Durg (C.G.)

---- Respondents

For Petitioners: Petitioner No.1 in person.

For Respondents No.1 and 2: -

Mr. T.K. Tiwari, Advocate.

For Respondents No.3 and 4 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondents No.6 and 7: -

Mr. A.D. Kuldeep, Advocate.

Amicus Curiae: Mr. Rakesh Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board02/12/2019

1. The petitioners call in question the order of the revisional Court dated 9-10-2012 passed by the 3rd Additional Sessions Judge, Durg, in Criminal Revision No.143/2012 by which the learned revisional Court has affirmed the order dated 10-7-2012 passed by the Sub-Divisional Magistrate, Chhawani (Durg) in Criminal Case No.4350/2009.
2. I have heard petitioner No.1 in person and learned counsel for the parties at length and also perused the records.
3. On the istegasha having been submitted by the Station House Officer, Police Station Supela, Bhilai, before the Sub-Divisional Magistrate, Chhawani (Durg) (party No.1 being the petitioners herein and party No.2 being respondents No.1 & 2 herein), with respect to Khasra No.2635/1, area 4680 sq.ft., both claiming possession over the suit land and there is likely to be breach of peace over the said land, preliminary order under Section 145 of the CrPC was passed and both the parties were directed to submit their claim with regard to possession. Thereafter, parties appeared and filed their respective documents and by order dated 22-2-2010, possession of the petitioners herein – party No.1 was declared over the suit land which was challenged by respondents No.1 & 2 herein in Criminal Revision No.45/2010 and the said revision was allowed by the revisional Court and the matter was remanded to the Sub-Divisional Magistrate for establishing the identity of Khasra Nos.2767, 2830,

2831 & 2635 after making demarcation. Thereafter, demarcation was made and ultimately, by order dated 10-7-2012, the Sub-Divisional Magistrate, Chhawni (Durg) held that possession of respondents No.1 & 2 was found on Khasra No.2635/1, area 4680 sq.ft., which was challenged by the petitioners herein before the revisional Court and the learned revisional Court by order dated 9-10-2012 dismissed the revision and affirmed the order of the learned Sub-Divisional Magistrate against which this petition under Section 482 of the CrPC has been filed.

4. Petitioner No.1 in person would submit that the order of the Sub-Divisional Magistrate as well as the revisional Court are unsustainable and bad in law.
5. Mr. T.K. Tiwari, learned counsel appearing for respondents No.1 & 2 herein, would support the orders impugned.
6. I have considered the rival submissions made by learned counsel for the parties and went through the records with utmost circumspection.
7. In order to judge the correctness of the plea raised at the Bar, it would be advantageous to refer and reproduce the provisions contained in Sections 145(1) to 145(6) of the CrPC for ready reference which are 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 to 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 his 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).”

8. A focused glance of the scheme of Section 145 of the CrPC would show that it is intended to prevent breach of peace and to maintain tranquility and for that end to provide a speedy remedy by bringing the contending parties before the court and ascertaining who of them was in actual possession of subject property to maintain status quo until their rights are finally determined by a competent court, as the life of the order is coterminous with passing of decree by the civil court.
9. In the matter of **Chandu Naik and others v. Sitaram B. Naik and another**¹, way back in the year 1977, Their Lordships of the Supreme Court have held that in substance and in effect a proceeding under Section 145 of the CrPC is not for the purpose of evicting any person from any land but is primarily concerned with the prevention of the breach of peace by declaring the person found in possession to be entitled to remain in possession until evicted therefrom in due course of law.
10. Likewise, Their Lordships of the Supreme Court in the matter of **Shanti Kumar Panda v. Shakuntala Devi**² considering the nature of proceedings under Section 145 of the CrPC held that the proceedings under Sections 145/146 of the CrPC are quasi-civil, quasi-criminal in nature or an executive or police action.

11. In sum and substance, Sections 145 and 146 of the CrPC together

1 (1978) 1 SCC 210

2 (2004) 1 SCC 438

constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace because of a dispute concerning any land or water or their boundaries. (See Mathuralal v. Bhanwarlal and another³.)

12. Section 145 of the CrPC authorises a Magistrate to issue a declaratory order in favour of the party that is entitled to possession “until evicted therefrom in due course of law”. The Magistrate does not decide or purport to decide a party's title or right to possession of the land as those areas are especially reserved for the Civil Court. The foundation of assumption of jurisdiction is an apprehension of breach of the peace. The Magistrate only makes a temporary order irrespective of the rights of the parties which will have to be agitated and determined in the manner provided by law. Under Section 145(1) the jurisdiction of a Magistrate is exclusively limited to decide whether any and which of the parties was, on the date of the preliminary order, in possession of the land in dispute. The order only declares the actual possession of a party on the specific date.

13. However, in the event of any party who has been forcibly and wrongly dispossessed within two months next before the date of the preliminary order, the Magistrate is authorised to treat the party who was dispossessed as if he had been in possession on such date. The power is enjoined in proviso to Section 145 (4) read with subsection (6) thereof. Thus, the Magistrate has to decide who is in actual possession on the date of his preliminary order but if he finds

3 AIR 1980 SC 242

that the party in de facto possession on that date had obtained possession forcibly and wrongfully dispossessing the other party within two months next preceding the date of his order. The Magistrate can treat the dispossessed party as if he was in possession on such date and restore possession to him, and, prohibit the dispossessor from interfering with the possession until eviction of that person in due course of law.

14. Proviso to Section 145(4) of the CrPC is grounded on the principle that forcible and wrongful dispossession is not to be recognised under the criminal law. The word 'dispossessed' in the proviso means and includes to be out of possession ousted, ejected, removed from the premises or excluded. Even a person having a right to possession cannot dispossess another by taking the law into his hands and making a forcible entry otherwise than in due course of law. (See R.H. Bhutani v. Miss Mani J. Desai⁴.)

15. In the matter of R.H. Bhutani (supra), Their Lordships of the Supreme Court while considering the provisions contained in Section 145 (1) of the CrPC have held that the jurisdiction under Section 145 being of an emergency nature, the Magistrate must act with caution but that does not mean that where on an application by one of the parties to the dispute he is satisfied that the requirements of the section are existent, he cannot initiate proceedings without a police report. Once the Magistrate, having examined the applicant on oath, is satisfied that his application, discloses the existence of the dispute and the likelihood of breach of

4 AIR 1968 SC 1444

peace, there is no bar against his acting under Section 145(1) of the CrPC.

16. Their Lordships of the Supreme Court also considered in **R.H. Bhutani** (supra) the meaning of the word 'dispossessed' as employed in the proviso to Section 145(4) of the CrPC and held, dispossession of the party within two months next preceding the date of that order has to be considered and further held that enquiry 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 proviso, the 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 purpose of the enquiry be deemed to have been in possession on the date of that order and observed as under in paragraph 8: -

“8. The object of Section 145, no doubt is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined by a competent court. The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute, regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two, conditions, the section requires him to pass a preliminary order under sub-section (1) and thereafter to make an enquiry 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 or exist. The enquiry 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, the 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 purpose of the enquiry be deemed to have been in possession on the

date of that order. The 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 the prescribed period, the 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 and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of Section 145.”

17. Their Lordships further held in **R.H. Bhutani** (supra) that the Magistrate has first to decide who is in actual possession at the date of his preliminary order. If, however, the party in de facto possession is found to have obtained possession by forcibly and wrongfully dispossessing the other party within two months next preceding the date of his order, the Magistrate can treat the dispossessed party as if he was in possession on such date, restore possession to him and prohibit the dispossessor from interfering with the possession until eviction of that person in due course of law.
18. Similarly, in the matter of **R.C. Patuck v. Fatima A. Kindasa and others**⁵, the Supreme Court considered the provisions contained in the proviso to Section 145(4) of the CrPC and held that in absence of any police report or receipt of information by the Magistrate as to loss of possession by the party in question within the period contemplated by the proviso, restoration of possession cannot be granted. It has been observed in paragraph 9 of the report as under:-

5 AIR 1997 SC 2320

“9. It will be seen from the facts stated above that the order under Section 145(1) was passed by the learned Magistrate on 16.3.1993. The question is whether the Magistrate could have passed any order in favour of the petitioner under sub-section (4) of Section 145. Going by the main sub-clause (4) of Section 145 it is clear that the Magistrate could initially decide who was in possession as on the date when the order under Section 145(1) was passed on 16.3.1993. In cases where the proviso to the said sub-clause (4) applied, that is, if it appeared to the Magistrate that any party had 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), the Magistrate might treat the party so dispossessed as if the said party had been in possession on the date of his order under sub section (1). In other words, if the conditions mentioned in the proviso to sub-section (4) were satisfied, the Magistrate could deem a person to be in possession as on the date of the order under Section 145(1) notwithstanding the fact that he was not infact in possession on that date, but lost possession earlier, within two months next before the order. In this case unfortunately there is no material to show that any report of a police office or other information was received by the Magistrate within the period contemplated by the proviso. On the other hand, petitioner's admissions show that she lost possession much before the period mentioned in the said proviso.”

19. Thus, under Section 145 (1) of the CrPC, claim, in respect whereof a Magistrate is empowered to decide is the fact of actual possession of the subject of dispute. Sub-section (4) of Section 145, which defines the scope of the enquiry empowers the Magistrate to decide the said question without reference to the merits of the claims of the parties to a right to possess the subject of dispute. Therefore, the question of a right to possession is foreign to the scope of the enquiry. Only the question of actual possession has to be determined and to be decided by the learned Magistrate and the question of title should not be allowed to be agitated, as the question of title or right to possession are beyond the scope of

proceeding under Section 145 of the CrPC and the Magistrate has only to decide who is in actual physical possession of the land in dispute and not who has the right to possession, and he is entitled to a declaration under Section 145.

20. Sub-section (6)(a) of Section 145 of the CrPC treats the party dispossessed within the period provided in the proviso to sub-section (4) as being in possession of the disputed property on the date of order made under sub-section (1) and restoration of possession to the party forcibly and wrongfully dispossessed attracting the proviso to sub-section (1) is a substance and net effect to be the party to the possession for deciding his possession on the date of preliminary order made under sub-section (1) or next two months before the date of preliminary order, as the case may be.

21. A careful perusal of the aforesaid decisions would show that the Sub-Divisional Magistrate on remand and after demarcation made, did not decide as to who was in possession two months next before the date of preliminary order. Thus, the Magistrate has to decide who is in actual possession on the date of his preliminary order but if he finds that the party in de facto possession on that date had obtained possession forcibly and wrongfully dispossessing the other party within two months next preceding the date of his order. The Magistrate can treat the dispossessed party as if he was in possession on such date and restore possession to him, and, prohibit the dispossessor from interfering with the possession until eviction of that person in due course of law.

22. In the instant case, it appears that after remand by the revisional

Court, the Sub-Divisional Magistrate has not cared to decide on the aforesaid principle of law, it has only been decided on the date of passing the order holding that party No.2 is in possession, whereas it ought to have passed order as to who was in possession two months prior to the date of preliminary order, that has not been done and possession of party No.2 has been declared on the date of order. The revisional Court also did not advert to the requirements of Section 145 of the CrPC. In view of the principles of law laid down by this Court in the matter of Joyal Bechak v. Subhash Sawal and another⁶, this is a fit case where this Court can step-in under Section 482 of the CrPC and interfere with the order of the learned revisional Court affirming the order of the trial Magistrate to secure the ends of justice.

23. As a fallout and consequence of the aforesaid discussion, the petition under Section 482 of the CrPC is allowed and the order passed by the revisional Court as well as the order passed by the Magistrate are hereby set aside. The matter is remitted back and restored to the file of the Sub-Divisional Magistrate, Chhawani (Durg) to consider afresh the material available on record and to pass order after hearing the parties, clearly recording a finding which of the parties was in possession of land in dispute within two months next before the date on which the istegasha was produced before him or within two months prior to the date of passing of preliminary order dated 13-7-2009 under Section 145(1) of the CrPC. The learned Magistrate would conclude the proceeding

⁶ Cr.M.P.No.521/2017, decided on 20-6-2017

expeditiously and preferably within 45 days from the date of production of a copy of this order.

24. It is made clear that the learned Magistrate will take a decision on the basis of material available on the record, without being influenced by any of the observations made in this order and decide the rights of the parties strictly in accordance with law.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma