

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.984 of 2015

1. Shirish Nair S/o S.K. Nair, aged about 35 years,
 2. Manish Nair S/o S.K. Nair, aged about 39 years,
 3. S.K. Nair S/o Late Krishna Pillai, aged about 67 years,
- All R/o Ward No.2 Amakherwa, Manendragarh, District-Korea (CG)

---- Petitioners

Versus

Gurubaksh Singh Chhabra S/o Sadar Khel Singh Chhabra, aged 49 years, R/o Manendragarh, District Korea (CG)

---- Respondent

For Petitioners:-	Mr.Sakti Raj Sinha, Advocate
For Respondent:-	Mr.Y.C.Sharma, Advocate

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board02/05/2019

1. In Section 145 CrPC proceeding initiated at the instance of the respondent herein, on 29.3.2014 the Sub-Divisional Magistrate, Manendragarh passed the order and directed reversion of possession to the respondent, which was maintained by the First Additional Sessions Judge, Manendragarh in Criminal Revision No.48/2014 by order dated 07.10.2015, against which, this CrMP has been preferred.
2. Mr.Sakti Raj Sinha, learned counsel for the petitioners, would submit that the Sub-Divisional Magistrate is absolutely unjustified in proceeding ex-parte against the petitioners on 14.3.2014 i.e. the date fixed by reader and thereafter they were deprived of opportunity to lead evidence, as such, order passed by the Sub-Divisional Magistrate

as well as the revisional Court deserve to be set aside.

3. Mr.Y.C.Sharma, learned counsel for the respondent, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. It is true that in the proceeding initiated by the respondent herein under Section 145 of the CrPC, reader of the Sub-Divisional Magistrate on 28.2.2014 fixed the date on 14.3.2014, on that day, the present petitioners did not appear and they were proceeded ex-parte. On 21.3.2014, evidence of the respondent herein was recorded and ex-parte order was passed on 29.3.2014 directing reversion of possession to him. On 14.3.2014 the date on which the Sub-Divisional Magistrate proceeded ex-parte against the petitioners was the date fixed by reader and not the date fixed by the Sub-Divisional Magistrate for hearing, therefore, the petitioners could not have been proceeded ex-parte on that day, as such, order proceeding ex-parte against the petitioners on 14.3.2014 was *ex-facie* illegal and bad in law.
6. Apart from this, Section 145(4) of the CrPC provides for receiving evidence by the parties on the question of possession, but on account of proceeding ex-parte unauthorizedly, the petitioners were deprived of opportunity to lead evidence and consequently, they have suffered prejudicially by order dated 14.3.2014 and the revisional Court has also perpetuated the illegality by affirming the order passed by the Sub-Divisional Magistrate.

7. In view of above, order dated 29.3.2014 passed by the Sub-Divisional Magistrate, Manendragarh in Misc. Criminal Case No.34/2012-13 and order dated 07.10.2015 passed by the First Additional Sessions Judge, Manendragarh in Criminal Revision No.48/2014 are hereby set aside. Section 145 CrPC proceeding is restored to the file of Sub-Divisional Magistrate, Manendragarh. The Sub-Divisional Magistrate, Manendragarh shall pass the order afresh after giving an opportunity to the petitioners to file reply and to lead evidence.
8. The CrMP is allowed to the extent indicated hereinabove. Records of the Courts below be sent back forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-