

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35277 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Md. Taiyab Khan son of Late Md. Sadik Khan, Resident of Village- Uperdih Charkawan, PO and PS- Rafiganj, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Brijnandan Singh alias Bablu Singh son of Late Ram Bilash Singh, Resident of Village- Uperdih Charkawan, PO and PS- Rafiganj, District- Aurangabad.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Asif Kalim, Advocate

For the Opposite Party/s : Mr. Surendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

Date : 16-10-2023

The present petition, under Section 482 Cr.P.C. has been preferred by the petitioner impugning the order dated 16.05.2016 passed by Ld. Additional Sessions Judge-IV, Aurangabad in Cr. Rev. No. 48 of 2015 (6 of 2015) whereby Ld. A.S.J. has set aside the order dated 16.05.2015 passed by Ld. Executive Magistrate, Aurangabad in criminal proceeding bearing No. 1629 of 2014 (22 of 2015) whereby Ld. Executive Magistrate had rejected the petition of Respondent No.2, Brijnanadan Singh for dropping the proceeding on the ground of pendency of Title Suit No. 386 of 2014 before Ld. Sub-Judge-I, Aurangabad.

2. Relevant facts, as emerging from the record, are that

on the basis of report of the local police station, the proceeding under Section 144 Cr.P.C. was initiated between Md. Taiyab Khan and Sri Brijnandan Singh @ Bablu Singh. The same proceeding under Section 144 Cr.P.C. was converted into a proceeding under Section 145 Cr.P.C. vide order dated 14.10.2014 and during pendency of the proceeding under Section 145 Cr.P.C. the said Brijnandan Singh @ Bablu Singh moved an application before Ld. Executive Magistrate to drop the proceeding under Section 145 Cr.P.C. on the ground that a civil suit bearing Title Suit No. 386 of 2014 has been pending between the parties in dispute of same subject matter before Ld. Sub-Judge-I, Aurangabad and there is no justification to continue the parallel proceeding under Section 145 Cr.P.C. The said suit has been filed by Kalawati Devi and others including Brijnandan Singh @ Bablu Singh against the defendants including Md. Taiyab Khan for declaration of title and permanent injunction along with other ancillary reliefs. The plaintiffs have claimed right and title over the suit property on the basis of purchase made from one Triloki Mistri by means of registered sale deed dated 03.01.1989. The said vendor had title to and possession over the land in question by virtue of auction purchase in execution of decree notwithstanding that the land of

Khata 160 was recorded in the names of raiyats and part area thereof was shown as *Kabristan* in cadestral survey record of rights. The proceeding before Ld. Executive Magistrate is going on in regard to Khata No. 160, Khesra No. 1060 measuring 85 decimal situated at village- Uperdih Charkawan. Police reported to the Executive Magistrate that on account of tension between both the parties, there is apprehension of breach of peace. It is also in the police report that Brijnandan Singh @ Bablu Singh is a man of criminal bent of mind. It further transpires that the property in dispute is not attached by Ld. Executive Magistrate. Only the enquiry regarding possession over the property is going on under Section 145 Cr.P.C.. It further transpires that while rejecting the application of Brijnandan Singh @ Bablu Singh, Ld. Executive Magistrate has held that there is *Kabristan*, *Majjar* and *Imambara* over it and 2nd party Brijnandan Singh @ Bablu Singh is constructing house over it, resulting into dispute between both the parties and there is possibility of apprehension of breach of peace.

3. Being aggrieved by rejection of the application by Executive Magistrate for dropping the proceeding under Section 145 Cr.P.C., 2nd party Brijnandan Singh preferred Criminal Revision bearing No. 48 of 2015/ 06 of 2015 before Sessions

Court and vide impugned order dated 16.05.2016, Ld. Additional Sessions Judge-IV, Aurangabad had allowed the revision petition setting aside the order of Ld. Executive Magistrate dated 16.05.2015 and directed Ld. Executive Magistrate to pass order afresh as per law. While allowing the revision petition, Ld. Additional Sessions Judge-IV held - “Ld. Executive Magistrate assumed jurisdiction in utter disregard of law even knowing pendency of Title Suit in between the parties and in respect of same subject matter, in which equally efficacious remedy is available to the parties which is to be ultimately adjudicated completely and effectually”.

4. Heard Ld. counsel for the petitioner and Ld. A.P.P. for the State.

5. As the case is still at the stage of admission, hence nobody is present on behalf of Respondent No.2.

6. Ld. counsel for the petitioner submits that pendency to the civil suit regarding the same property, which is subject matter of criminal proceeding under Section 145 Cr.P.C. is not barred to initiation or continuation of any proceeding under Section 145 Cr.P.C. before Executive Magistrate because under Section 145 Cr.P.C. the Executive Magistrate is empowered to protect the party in possession of the landed property in dispute

from forceful dispossession by any other party and on account of such forceful dispossession by either of the parties, there is apprehension of breach of peace. He further submits that in the case at hand, the Respondent No.2 herein Brijnandan Singh @ Bablu Singh, who was 2nd party before the Executive Magistrate is constructing a house over the land in dispute, which is a *Kabristan* and such construction has made to tension between the parties giving right to apprehension of breach of peace and in such situation pendency of any civil suit does not bar initiation or continuation of criminal proceeding under Section 145 Cr.P.C. before Executive Magistrate.

7. However, Ld. A.P.P. for the State per contra submits that there is no illegality or infirmity in the impugned order passed by the revisional court setting aside the criminal proceeding under Section 145 Cr.P.C. before Executive Magistrate because it is a settled principle of law that in case of any civil dispute in regard to any landed property regarding title and possession, Civil Court has exclusive jurisdiction and parties are required to move Civil Court rather than Executive Magistrate. Jurisdiction under Section 145 Cr.P.C. arises to Executive Magistrate only when there is apprehension of breach of public peace and tranquility on account of dispute between

the parties in regard to possession. But as per the material on record, it does not manifest that effect of the disputes regarding the land in question is over the public at large and even the step of Ld. Executive Magistrate does not show that there is any such apprehension of breach of public peace and tranquility. Ld. Executive Magistrate has only converted the proceeding from one under Section 144 Cr.P.C. into one under Section 145 Cr.P.C. and no order has been passed to attach the property in question. Ld. Executive Magistrate is conducting only enquiry into the possession of the party over the land in dispute. Moreover the parties are already before the Civil Court by way of civil suit bearing Title Suit No. 386 of 2014 preferred by Brijnandan Singh for declaration of title and injunction and the parties have opportunity to approach the Civil Court for appropriate remedy in regard to any interim possession or restraining either of the parties from interference in the peaceful possession and hence, there is no justification to allow the continuation of the criminal proceeding under Section 145 Cr.P.C. before Executive Magistrate.

8. Before I consider the above submissions of the parties, it is imperative to know the ambit and scope of jurisdiction under Section 145 Cr. P.C.

9. Section 145 Cr. P.C. is the part of Chapter X of the Code of Criminal Procedure, 1973 dealing with maintenance of public order and tranquility. Section 145 Cr. P.C. is the part of Sub Chapter D dealing with disputes as to immovable property. Besides Section 145 Cr. P.C., Section 146, 147 and 148 Cr. P.C. are also part of Sub Chapter D of Chapter X of Cr. P.C. It is found that disputes over the land and water often results in breach of the peace, violence and bloodshed, the Executive Magistrates have been empowered under Section 145-148 to intervene at an incipient stage of such a dispute and to compel the disputants to have recourse to legal remedies. If, upon a report of a police officer or upon other information, an Executive Magistrate is satisfied that a dispute concerning any land or water or the boundaries thereof exists within his jurisdiction, and that such dispute is likely to cause a breach of the peace, he shall make an order in writing requiring the parties concerned in such dispute to attend to his court on a specified date and time, and to put in written statements of their claims regarding the fact of actual possession of the subject of dispute. While making such order, the Magistrate shall state the grounds for his satisfaction referred to above. The very foundation of the jurisdiction of a Magistrate in cases under Section 145 is based

on the existence of a dispute giving rise to apprehension of breach of peace and as soon as such apprehension ceases to exist or if it never existed, the jurisdiction of the Magistrate to proceed with the case ceases and the only order he has to pass is to drop the proceedings. The enquiry under Section 145(4) is limited to the question of actual possession on the relevant date and is not concerned with the claims and merits of the parties in regard to the right to possess the subject of dispute. If the magistrate decides that one of the parties was in 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.

10. Hon'ble Supreme Court in para 8 of **R.H. Bhutani vs. Mani J. Desai, (1968 SCC OnLine SC 5)** held that 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.

11. Hon'ble Supreme Court further held in para 9 that the satisfaction under sub-section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.

12. Hon'ble Supreme Court in para 10 of **Shanti Kumar Panda Vs. Shakuntala Devi [(2004) 1 SCC 438]** has held that possession is nine points in law. One purpose of the enforcement of the law is to maintain peace and order in society. The disputes relating to property should be settled in a civilized

manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in sub-section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in the proviso to sub-section (4) of Section 145 and maintain the *status quo* as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive

Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned.

13. Hon'ble Supreme Court further held in para 15 that it is well settled that a decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. A decision given under Section 145 of the Code has relevance and is admissible in evidence to show: (i) that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order under Section 145(1) or an attachment under Section 146(1), on the given date; and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the

competent court is *not bound* by the findings arrived at by the Magistrate even on the question of possession though, as between the parties, the order of the Magistrate would be *evidence of possession*. The finding recorded by the Magistrate does not bind the court. The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent court.

14. Hon'ble Supreme Court further held in para 22 that the stage of passing an interlocutory order such as on an application for the grant of ad interim injunction under Rule 1 or 2 of Order 39 CPC, the competent court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and the irreparable injury — the three pillars on which rests the foundation of any order of injunction. At that stage material in the shape of affidavits, documents and

pleadings is placed before the court for its consideration. The order of the Executive Magistrate may also be placed before it, who having held an enquiry, though summary in nature, has arrived at a finding on the question of possession which the Code intends to be sustained unless the court of competent jurisdiction by its judicial order supersedes the finding or the effect of such finding and till then all disturbances in possession of the successful party are intended by the Code to be forbidden. The civil court shall also respect such order and will be loath to arrive at an interim arrangement inconsistent with the one made by the Executive Magistrate. However, this is far from holding that the civil court does not have jurisdiction to make an order of injunction inconsistent with the order of the Executive Magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as an exception. There may be cases such as one where the order of the Executive Magistrate can be shown to be without jurisdiction, palpably wrong or containing self-contradictory findings. For example, the Magistrate may have made an order treating the party dispossessed beyond two months to be as in possession. There may be cases where in spite of the order made by the Executive Magistrate based on the evidence adduced before it, the competent court, based on

the material produced before such court, may be inclined to hold that *prima facie* a very strong case for retaining or placing one of the parties in possession of the suit property is made out or where it will be totally unjust or inequitable to continue one party in possession of the property as ordered by the Executive Magistrate. In such exceptional situations, the competent court (which will mostly be a civil court) may have jurisdiction for granting an order of injunction in departure from the findings recorded and the declaration made by the Executive Magistrate under Section 145 of the Code of Criminal Procedure. The order under Section 146 of the Code would not pose a problem of that magnitude. Inasmuch as the property is under attachment and is placed in the hands of a receiver, the civil court can comfortably examine whether it would be just and expedient to continue with the attachment and with the same receiver or to appoint another receiver or to make some other interim arrangement during the pendency of the civil suit.

15. Hon'ble Supreme Court in Bhinka Vs. Charan Singh (AIR 1959 SC 960) has held that the Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. His order is a temporary order irrespective of the rights

of the parties, which will have to be agitated and adjudicated upon by a competent forum and in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a civil court and the moment a civil court makes an order of eviction, it displaces the order of the criminal court. The orders under Section 145 of the Code are thus merely police orders and do not decide any question of title.

16. Hon'ble Supreme Court in para 8 of **Ranbir Singh Vs. Dalbir Singh & Ors. [(2002) 3 SCC 700]** held that the Court, while dealing with a proceeding under Section 145 CrPC, is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the court is not required to decide either title to the property or right of possession of the same.

17. Hon'ble Supreme Court in para 7 of **Chandu Naik and Ors. Vs. Sitaram B. Naik and Anr. (1978 1 SCC 210)** has explained the duty of the Executive Magistrate under Section 145 and held that the Magistrate, in the first instance, will try to conclude the proceeding in accordance with the various provisions of Section 145 of the Code. If he is able to declare the possession of either party on consideration of the

evidence adduced or to be adduced before him he would do so. In that event the other party will be forbidden from creating any disturbance of the possession [including the deemed possession, in case the application of the proviso to sub-section (4) is found necessary] of the party declared in possession. The Magistrate, then, will have to withdraw the attachment in accordance with the proviso to sub-section (1) of Section 146, because, as per his order declaring a party in possession there would be no longer any likelihood of the breach of the peace with regard to the subject of dispute. The party not found in possession by the Magistrate will have to seek the redress of his grievance, if any, elsewhere. If, however, the Magistrate decides that none of the parties was in possession of the disputed property on the date of the order made under sub-section (1) of Section 145 or if he is unable to satisfy himself as to which of them was then in possession of the subject of dispute he need not lift the attachment until a competent Court had determined the rights of the parties as provided for in Section 146(1). In such a situation, recourse, if necessary, may be taken to sub-section (2) of Section 146 of the Code either by the Magistrate or a civil court, as the case may be.

18. Hon'ble Gauhati High Court in para 1 of

Tarulata Devi vs. Nikhil Bandhu Mishra, (1982 SCC OnLine Gau 35) has observed that the object of S. 145 of the Code is to prevent breach of peace 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, to maintain status quo until their rights are finally determined by a competent court. The life of the order is co- terminus with the passing a decree by Civil Court and the moment the Civil Court makes an order of eviction, the final order of the Criminal Court stands superseded. The section authorises a Magistrate to issue a declaratory order in favour of the party that he 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 these areas are especially reserved for the Civil Court. The foundation of assumption of jurisdiction is an apprehension of breach of the peace. The Magistrate makes only 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 Sec. 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.

19. Hon'ble Gauhati High Court further held in para 2 that in the event of any party who has been forcibly and wrongfully dispossessed within 2 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 sub-sec. (6) thereof. It is true that 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 defacto possession on that date had obtained possession forcibly and wrongfully dispossessing the other party within 2 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 disposessor from interfering with the possession until eviction of that person in due course of law.

20. Hon'ble Gauhati High Court further held in para 3 that it is evident that the proviso to Section 145(4) 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.

21. Hon’ble Gauhati High Court in para 5 of **Md. Ansar Uddin Vs. State of Assam & Ors. [2008 Cri. L.J. (NOC) 479 (GAU.)** has held that it is trite that for exercising a given power, when discretion is vested in an officer, Executive or Judicial, a corresponding duty to ensure that such discretion is not arbitrarily exercised, stands cast on such an officer. A careful reading of section 145(1) clearly reveals that in order to ensure that the drawing of a proceeding, under section 145, does not become whimsical or arbitrary, law places a duty, on Executive Magistrate, not to draw a proceeding, under section 145, unless he is satisfied that the dispute has given rise to apprehension of breach of the peace. In order to reveal as to why he was so felt satisfied, sub-section (1) of section 145 requires the Magistrate, who draws the proceeding, to assign the grounds of his satisfaction.

22. Hon’ble Gauhati High Court further held in para 7 that what is, now, of paramount importance to note is that mere omission to record the grounds of satisfaction by the Magistrate,

who draws the proceeding, under section 145, cannot ipso facto make the order illegal or without jurisdiction. In such circumstances, it is the duty of the Revisional Court to ascertain as to what were the materials placed before the Magistrate on the basis whereof the proceeding was drawn. If the materials justify drawing of the proceeding, then, satisfaction of the Magistrate, which is subjective in nature, cannot be interfered with. Hence, if the materials, on record based on which a proceeding is drawn, makes out a case for drawing of a proceeding under section 145, Revisional Court will not interfere with such an order, for, interference, in such a case, would be hyper-technical approach to an order drawing the proceeding. Even if, on the basis of the materials on record, there are two views possible and if an Executive Magistrate is found to have adopted the view that the materials on record justified drawing of a proceeding, Revisional Court would not interfere with such an order.

23. Hon'ble Gauhati High Court further held in para 8 that while considering the above aspect of the matter, it needs to be noted that the very case, set up by the first party, clearly reflects that the dispute, in question, was a dispute confined to the parties to the proceeding. Such a dispute is a private dispute and does not involve the members of the public, in general. When the members of the public have no interest in a dispute, such a dispute cannot

become the foundation for exercise of powers under section 145(1).

24. Hon'ble Gauhati High Court further held in para 9 that it is, at this stage, imperative to recall the scheme of section 145 read with section 146, Cr. P.C. Section 145 appears under Chapter X of the Code, which reads, "Maintenance of Public Order and Tranquillity". This chapter is divided into separate groups. Section 145 and 146 fall under Group-D. Though the heading of the chapter, in any legislation, is not the sole criterion for determination of the scope of the provisions, which may be embodied in such a chapter, the fact remains that the heading of the chapter in a piece of legislation does reflect the legislative intent. A careful analysis of the various provisions, contained in Chapter X, would show that this chapter essentially deals with maintenance of public order and tranquillity. In other words, a private dispute or a dispute, which has no bearing on public order and tranquillity, cannot be regarded as a dispute and such a dispute does not empower an Executive Magistrate to exercise jurisdiction under sub-section (1) of section 145.

25. Hon'ble Gauhati High Court further held in para 10 that a close analysis of the provisions of section 145 shows that the Magistrate is empowered to draw a proceeding, under sub-section (1) of section 145, if he is satisfied from report of a police

officer or upon other information that a dispute likely to cause breach of the peace exists concerning any land or water or the boundaries thereof within his local jurisdiction. A careful reading of section 145(1) also shows that on receipt of report or information as aforementioned, the Magistrate 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.

26. Hon'ble Gauhati High Court further held in para 11 that the provisions, contained in sub-section (1) of section 145, show that the source of information for the purpose of drawing a proceeding, under sub-section (1) of section 145, is not material; what is material is that the Executive Magistrate must feel satisfied about existence of a dispute as envisaged in section 145(1) and must assign the grounds of his being so satisfied. This apart, the dispute must relate to any land, water or boundary thereof and the dispute must be such, which is likely to cause breach of the peace. The expression "breach of the peace" does not really mean mental peace of the parties concerned. Disturbance of public order is distinct and different from actions of the individuals, which do not disturb the society to the extent of vibrating a general disturbance

of public order. The breach of peace, envisaged under section 145, Cr. P.C., means disturbance of the even tempo of the life of the community in a given locality. When a party illegally or forcibly occupies land of another party, people, in general, or even neighbours of such a party may be shocked and mentally disturbed, but life of the community may still move keeping pace with the even tempo of life of the community. If by such act of dispossession, even tempo of life of the community is disturbed or jeopardized, it may become a case of disturbance of public order and tranquillity. The acts of a private party, which affect personal rights of another party, do not disturb the even tempo of the society, for, such feuds are private feuds. Basis of jurisdiction under section 145(1) is a dispute, which is likely to cause a breach of the peace. Ordinarily, a person, dispossessed from his land, shall sue for recovery of the immovable property under the provisions of the Specific Relief Act and if there is a threat of his dispossession, he should institute a suit to obtain injunction. These are, ordinarily, forum for establishing rights of the litigants. A proceeding under section 145 is, therefore, an extra-ordinary provision to grant extra-ordinary relief, when there is likelihood of breach of the peace in a given locality. The final order of the Magistrate is subject to the decision of the Civil Court. It is, therefore, clear that private dispute between two persons, which

does not disturb law and order or occasion breach of the peace in the locality, cannot form basis for drawing a proceeding under section 145, Cr. P.C. and the forum for obtaining relief, in such a case, is the Civil Court of competent jurisdiction and not the Executive Magistrate's Court.

27. Hon'ble Gauhati High Court further held in para 13 that in order to enable an Executive Magistrate to assume jurisdiction under sub-section (1) of section 145, necessary it is that there is a dispute with regard to any land, water or boundaries thereof and the dispute must be such, which is likely to cause breach of the peace. This apprehension of breach of the peace is one of the condition precedents for assumption of jurisdiction under sub-section (1) of section 145. The breach of the peace, which sub-section (1) of section 145 envisages, is not breach of the peace between two individuals or private parties. The dispute must be such, which involves people, in general. In other words, a private dispute is not amenable to the exercise of jurisdiction, under section (1) of section 145, unless such a dispute affects the even tempo of life of the people in a given locality.

28. Hon'ble Gauhati High Court in para 10 of **Kaushal Mishra & Ors. Vs. Raj Kumar Mishra [2008 Cri. L.J. (NOC) 272 (GAU,)]** has held that when a Magistrate draws a proceeding under section 145(1), the order, drawing the

proceeding, is commonly known as preliminary order. Since there is no provision for conversion of the proceeding from one under sections 144 to 145 Cr. P.C., the order of conversion is nothing, but a preliminary order. This order, therefore, must reveal that the conditions precedent for drawing of a proceeding under section 145 stands satisfied.

29. Hon'ble Gauhati High Court in para 11 of **Kaushal Mishra & Ors. Vs. Raj Kumar Mishra [2008 Cri. L.J. (NOC) 272 (GAU,)]** held in para 11 that the dispute in the present case was out and out a private dispute inasmuch as the dispute did not involve anyone other than the parties to the proceeding and the members of the general public were neither affected nor were they shown to be interested in the dispute. Hence, it was held that the Ld. Magistrate had no jurisdiction in the matter and could not have drawn a proceeding under section 145.

30. Hon'ble Bombay High Court in **Chirstalin Costa Vs. State of Goa (1993 MH LJ 1409)** has observed that quarrels between two individuals normally does not create any problem of public order and at the most, it may lead to a problem of law and order which may be dealt with appropriate penal laws.

31. Hon'ble Delhi High Court in para 18 of **Dharampal & Ors. Vs. State of Delhi & Anr. (2012 SCC**

OnLine Del 5321) has held that jurisdiction under Sections 145 and 146 Cr. P.C. is preventive in nature and can be resorted to only in case of emergency or on genuine apprehension of breach of peace or if no one is in settled possession. Hon'ble Delhi High Court further held in para 19 that in our Constitution, there is a clear separation of judicial and executive powers. The civil disputes are to be decided by civil Courts and an unsuccessful litigant has a right to file an appeal. The SDMs cannot use the power conferred on them under Sections 145 and 146 Cr. P.C. to pass an interim injunction order when the civil Court has refused to do so.

32. Hon'ble Supreme Court in para 2 of **Ram Sumer Puri Mahant Vs. State of U.P. & Others [(1985) 1 SCC 427]** has held that when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, there is hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court. Parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to

approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.

33. Hon'ble Supreme Court in para 8 of **Jhummal @ Devandas Vs. State of Madhya Pradesh & Others [(1988) 4 SCC 452]** has held that an order made under Section 145 Cr.P.C. deals only with the factum of possession of the parties as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly instituted suit. He may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached.

34. Hon'ble Supreme Court in para 3 of **Prakash Chand Sachdeva Vs. State & Anr. [(1994) 1 SCC 471]** referring to **Ram Sumer Puri Mahant** (supra), has held that a suit or remedy in civil court for possession or injunction normally prevents a person from invoking jurisdiction of the

criminal court, particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Hon'ble Supreme Court further held that the ratio of **Ram Sumer Puri Mahant** (supra) cannot apply where there is no dispute about title and explained that when claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under Section 145 CrPC.

35. Hon'ble Supreme Court in Kunjbihari Vs. Balram and Anr. (2006 11 SCC 66) has also quashed the Criminal Proceeding under Section 145 of the Cr. P.C. when the rights of the parties in respect of property in question was settled by a compromise decree passed by the Civil Court during pendency of Civil Proceeding between the parties, despite the Civil Proceeding having achieved finality, proceeding under

Section 145 Cr.P.C. was initiated. The Proceeding under Section 145 Cr. P.C. was held to be an abuse of process of Court and was set aside by Hon'ble Supreme Court.

36. Hon'ble Patna High Court, followed the ratio of **Ram Sumer Puri Mahant** case (supra) in **Atahaul Haque & Ors. Vs. Md. Allauddin [(2000) 3 PLJR 90]** and **Chandra Shekhar Singh & Ors. Vs. State of Bihar & Anr., (2000 SCC Online Pat 1095)**, and held that when a civil suit is pending in a competent Civil Court, the parties to the suit can seek their relief/reliefs from that Court. A parallel proceeding in a criminal Court cannot be allowed to continue when civil suit is already pending between the parties regarding the subject matter.

37. Hon'ble Supreme Court in para 13 of **Amresh Tiwari Vs. Lalta Prasad Dubey & Anr., [(2000) 4 SCC 440]** explaining the ratio of **Ram Sumer Puri Mahant** (supra), held that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it was held that when possession is being examined by the civil court and parties were in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings under Section 145 Cr. P.C. should not continue.

Referring to **Jhummamal** case (supra), Hon'ble Apex Court, clarified that it is not that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate.

38. Hon'ble Patna High Court in para 5 of **Nand Kishore Prasad Sah Vs. State of Bihar, (2005(2) PLJR 506)** has held that when a civil litigation involving question of title and possession is pending for the same property, a parallel proceeding under Section 145 of the Code will amount to multiplicity of litigation and wastage of public time and money because question of title and possession has to be finally decided in the civil suit and not in the proceeding under Section 145 of the Code. Hence, a proceeding under Section 145 of the Code would be a misuse of process of Court.

39. Hon'ble Patna High Court in para 7 of **Gyandeo**

Sharma Vs. State of Bihar (2006(2) PLJR 181) has held that where suit between the parties is only for declaration of title in respect of the same property in that case also a parallel proceeding under section 145, Cr.P.C. cannot be instituted or allowed to proceed.

40. Hon'ble Patna Court in Ras Bihari Rai & Ors. Vs. The State of Bihar & Anr., (2006 SCC Online Pat 263) has followed **Ram Sumer Puri Mahant** case (supra) and held that proceeding initiated under Section 145 Cr. P.C. is not maintainable in view of civil litigation pending between the parties.

41. Hon'ble Supreme Court in para 4 of **Mahar Jahan vs. State of Delhi, [(2004) 13 SCC 421]** has held that when the same property is subject matter of the civil suit between the parties and criminal proceeding, there is no propriety to continue the criminal proceeding.

42. Hon'ble Patna High Court in para 9 of **Shrikant Prasad @ Chirkut Sah Vs. The State of Bihar [(2013) 3 PLJR 392]** has held that it is essential for the assumption of jurisdiction by the Magistrate under Section 145 of the Code that he should be satisfied either from the police report or from

the other information which would include an application by the party dispossessed that there is likelihood of breach of peace. The mere fact that there is dispute concerning land is clearly not sufficient by itself to give him jurisdiction. An order under this section must be a speaking order. The failure to indicate ground that there is likelihood of breach of peace vitiates the order. Where the order is vitiated, the Magistrate fails to get the jurisdiction to hold an enquiry or pass any order under this section. The defects in the preliminary order like failure to set out the grounds of his satisfaction regarding likelihood of breach of peace relating to immovable property would make the subsequent proceeding without jurisdiction and erroneous in law.

43. Hon'ble Allahabad High Court in Sharad Yadav @ Gappu & Anr. Vs. State of U.P. & Ors. (2013 SCC Online All 4840) has held that in the police report as well as in the orders under section 145(1) and 146(1) Cr. P.C., Ld. Additional City Magistrate has admitted the possession of petitioner no.1. Thus there was no dispute regarding possession before Ld. Additional City Magistrate and there was no occasion for him to pass an order under section 146(1) Cr. P.C. attaching the property. Mere apprehension of breach of peace is not

sufficient to initiate proceedings under sections 145 and 146(1) Cr. P.C.

44. Hon'ble Gauhati High Court in para 21 of **Madhu Sarma & Ors. Vs. Ajit Sarma [(2013) 2 Gauhati Law Reports 837]** has held that Section 145 is within Chapter X of the Cr. PC. which deals with maintenance of public order and tranquility, particularly the object of the section is to maintain law and order and to prevent a breach of peace by maintaining either one or other of the parties in possession just two months immediately before the reports submitted by the Police Officer or the information regarding the dispute likely to cause breach of peace concerning the land in dispute and not only that, in 145 proceeding the Magistrate cannot inquire the rights of the parties so far as the title of the land is concerned. He can only decide the question of possession and while considering the possession of the disputed land in question, then the Magistrate is to consider the evidence adduced by the parties in the proceeding. Every dispute between the parties regarding the possession of the land would not come within the purview of the section 145 of the Code unless there is likelihood of breach of peace and if there is no material before the Magistrate which suggests likelihood of breach of peace, then the proceeding under section

145 would be without jurisdiction. It is also settled that the likelihood of breach of peace should not only be existed on the date of application, but also on the date of preliminary order passed by the Magistrate.

45. Hon'ble Gauhati High Court has further held in para 22 that on proper examination of sub-section (1) of section 145, it appears that for initiating a proceeding relating to dispute of land an apprehension of breach of peace in and around the locality is a sine quo non, each and every dispute of land would not attract the provisions of section 145, more particularly private dispute between two individuals for which remedy under civil law is available and to come within the purview of 2nd proviso of sub-section (4) of section 145 it has to be proved that the person dispossessed forcibly and wrongfully within two months just before the date on which the police report or otherwise, the information was received by the Magistrate. In the instant case, from the evidence of the witnesses, it is not clear as to how and in what manner the 2nd party-petitioners forcibly and wrongfully dispossessed the 1st party-OP when the 1st party-OP was admittedly not residing in the hut within the disputed land as at the relevant time he was at Hatigaon and it is not established that how and in what manner the 2nd party-

petitioners trespassed into the alleged disputed land when admittedly from the evidence it appears that the 2nd party-petitioners were in the disputed land prior to 1974, i.e., before the death of the father of the 1st party-OP. Even if the allegation of the 1st party-OP regarding trespass of the 2nd party-petitioners into the disputed land is accepted, then also a question arises whether due to such trespass there is a likelihood of breach of peace in the locality where the disputed land is situated. If appears from the evidence of the 1st party witnesses that none of them stated anything regarding the likelihood of breach of peace in the locality for the alleged dispossession of the 1st party-OP. If this type of land dispute which in no way disturbs the peace and tranquility in the locality is considered for initiation of a proceeding under section 145 of the Cr. PC, then that would not really protect the interest of justice, rather defeat the justice. In view of the above, the learned Magistrate very rightly declared the possession of the 2nd party-petitioners over the disputed land which would be subject to the decision in the civil suit between the parties.

46. In Mahant Ram Saran Dass Vs. Harish Mohan & Anr. [(2001) 10 SCC 758], question before Hon'ble Supreme Court was whether the Respondent was entitled to invoke the

jurisdiction of the Magistrate under Section 145 CrPC, when a suit for declaration was pending before competent civil court. Here **Hon'ble Supreme Court** held that it is not disputed that in the civil suit itself the court has passed interim order of injunction, and put certain restrictions on the parties with regard to alienation of the property in question. It was true that the applicant before the Magistrate, was not arrayed as party-defendant in the civil suit, but that would not alter the position in any manner since the civil court being in seisin of the matter, any appropriate relief could be obtained from the civil court itself and the Magistrate had no jurisdiction in the case in hand to entertain the application under Section 145, and to pass any orders thereon. Hence, the proceedings initiated by the Magistrate under Section 145 CrPC was set aside.

47. Hon'ble Allahabad High Court in para 13 of **Ganga Bux Singh Vs. Sukhdin (1958 SCC Online All 297)** has held that Sec. 145(1) does not specifically mention any petition. The Magistrate has to be satisfied from a 'police report' or 'other information'. That 'information' may be an application by an interested party or a third party or even the Magistrate's personal information. The information may have been communicated to him in writing or orally or he may have even

noticed some conduct of a party which might have given him an indication of an apprehension of a breach of the peace. The starting point of any proceeding under Section 145 Cr. P.C. is not the information received by the Magistrate or the application made to him or even the police report but his satisfaction recorded in writing.

48. In Laxmi Kant Dubey Vs. Smt. Jamuni and Ors. (1999 SCC OnLine All 809), there was civil dispute between the parties and proceeding under Section 145 of the Cr.P.C. was also initiated. Here, Hon'ble Allahabad High Court quashed the proceeding under Section 145 of the Cr. P.C. following the ratio of **Ram Sumer Puri Mahant's** case (supra).

49. In Brahmaputra Iron & Steel Co. Pvt. Ltd & Anr. Vs. Premchand Tolaram Bafna Charitable Trust, Assam [2012 Cri.L.J. (NOC) 375 (GAU.)], there was a dispute in regard to the land between the parties and civil suit was filed in Civil Court, but at the same time criminal proceeding under Sections 145 and 146 was also initiated, which was set aside by the Hon'ble Gauhati High Court, holding that if the criminal proceeding is allowed to continue, it would amount to abuse of process of the Court.

50. In Sundari Devi & Ors. Vs. Dudheshwar Singh & Ors. (2009(4) PLJR 1014), the question was whether criminal court can pass any order under Section 145 Cr. P.C. when the

matter is decided by competent civil court in its trial and in appeal and thereafter pending before the High Court in second appeal. The right, title and possession over the disputed land between the parties was decided by the trial court as well appellate court. The matter was pending in the High Court in second appeal. Hence, the criminal proceeding under Section 144 Cr. P.C. being converted under Section 145 Cr. P.C. was set aside by Hon'ble Patna High Court.

51. In Radheshyam Sharma & Anr. V. Jagtendra Prasad Jaiswal & Anr. [2010(1) AIR Jhar R 780, the main question before the Court was whether proceeding under Section 145 Cr. P.C. should be allowed to proceed in view of the fact that opposite party had already initiated a civil suit and interim application was filed therein. Civil suit was for declaration of right, title and interest for perpetual injunction. In this case Hon'ble Jharkhand High followed **Ram Sumer case** (supra) and held that there is no reason to allow the parallel proceeding under Section 145 Cr. P.C. Since, the civil suit was going on between the parties regarding same property, continuation of present proceeding under Section 145 Cr. P.C. was held to be consuming public time unnecessarily against public interest.

52. Hon'ble Punjab and Haryana High Court in Sukhbir Singh & Ors. Vs. State of Punjab & Ors. [(2008

Cri. L.J. (NOC) 714 (P.&H.)] has also held that in view of the fact that once the matter stands settled finally between the parties with regard to their rights qua property and the civil proceedings are pending in which status quo has already been ordered, initiation of proceedings under Sections 145 and 146 Cr. P.C. can be said nothing but an abuse of the process of the court and therefore cannot be allowed to continue.

53. This Court in **Yugal Kishore Choudhary Vs. The State of Bihar & Ors. (2023 SCC OnLine Pat 3883)** has held in para 53 that it emerges from the statutory provisions of Section 145 Cr. P.C. and relevant case laws on the subject that mandate of Section 145 Cr.P.C. is that in case taking forceful possession of any property by either party leads to apprehension of breach of public peace, proceeding under Section 145 Cr. P.C should be initiated and the possession of property of the party should be protected against forceful dispossession by other party taking law in his own hand. It also manifests that apprehension of breach of public peace is *sine qua non* for invoking jurisdiction under Section 145 Cr. P.C. by Executive Magistrates. It is also pertinent to point out that concept of public peace and tranquility is much wider concept than that of simple problem of law and order. All law and order problems cannot be equated with breach of public peace unless it affects the public at large, like riot, affray or

widespread unrest. Simple disputes between two individuals involving violation of penal laws on the part of the two cannot be termed as breach of public peace. Similarly, purely civil dispute between two individuals also cannot be treated as breach of public peace. For resolution of civil disputes between parties, there is establishment of Civil Courts in our legal framework, whereas in case of violation of criminal law, there is provision of prosecution of such persons in criminal courts. Occasion for invoking jurisdiction under Section 145 Cr. P.C. comes to Executive Magistrate only where there is apprehension of breach of public peace and tranquility so that such breach may be nipped in the bud. However, on the pretext of apprehension of breach of public peace, Executive Magistrate is not expected to exercise jurisdiction of Civil or Criminal Courts. Such colourable exercise of jurisdiction would be against the object and spirit of Section 145 Cr. P.C. and it would render Civil and Criminal Courts irrelevant and the people would get harassed by illegal and unnecessary proceedings. In our legal framework, power and jurisdiction are defined for different instrumentalities of the State and no instrumentality is expected to exceed its jurisdiction and encroach upon that of others.

54. In the case at hand, I find that the proceeding before the Magistrate has been initiated only between two individuals,

namely, Md. Taiyab Khan and Brijnandan Singh. Though the land in question is allegedly part of *Kabristan*, first party before Ld. Executive Magistrate is only single individual and not the other members of Muslim community and second party is also single individual. As per police report, there is tension between both the parties and on account of which, there is apprehension of breach of peace and even Ld. Executive Magistrate has held in his order dated 16.05.2015 that on account of construction being done by Brijnandan Singh, there is dispute between both the parties and there is possibility of apprehension of breach of peace. However, in his order, Ld. Executive Magistrate has not mentioned that in the alleged dispute, the public at large are involved and interested. As such, the material on record shows that the effect of the alleged dispute is confined only to two individuals, who are parties to the proceeding before Ld. Executive Magistrate. It further transpires that second party, Brijnandan Singh, who is Respondent No.2 herein, has already preferred civil suit, bearing Title Suit No. 386 of 2014, before Ld. Sub-Judge-I, Aurangabad for declaration of title and permanent injunction along with other ancillary relief, against the defendants including Md. Taiyab Khan, who was first party before Ld. Executive Magistrate.

55. As such, it manifests that the alleged dispute is purely civil in nature between two individuals and its effect is also

confined only to the two individuals, who are parties to the proceeding before Ld. Executive Magistrate. No public at large are involved or interested in the alleged dispute. As such, alleged facts and circumstances cannot be ground for any apprehension of breach of peace. At most, they constitute a dispute of civil nature between two individuals and Civil Court is already seized of the matter where the parties can approach for appropriate remedy, like interim possession or any interim injunction against either of the parties and the Civil Court is duly bound to dispose of such application without any delay. Hence, Ld. Executive Magistrate had no occasion to invoke extra-ordinary jurisdiction under Section 145 Cr. P.C. The proceeding, in fact, is an abuse of the process of the Court and liable to be set aside and Ld. Additional Sessions Judge rightly set aside the impugned order.

56. However, it is pertinent to point out that there was no need for Ld. Additional Sessions Judge to direct the Ld. Executive Magistrate to conduct further enquiry and pass fresh order. The provision for directing further enquiry by Revisional Court is enshrined in Section 398 Cr. P.C., which reads as follows:-

“398. Power to order inquiry.- On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate

Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged: Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.”

57. It clearly manifests from the provisions of Section 398 Cr. P.C. that further enquiry is directed into a complaint which has been dismissed under Section 203 or Section 204(4) of Cr. P.C. or into a case of any person accused of an offence who has been discharged. In the case at hand, it was sufficient for Ld. Additional Sessions Judge to set aside the impugned order passed by Ld. Executive Magistrate after finding the order unsustainable in the eyes of law.

58. However, I have no dispute with the submission of Ld. Counsel for the petitioner that in each and every circumstances, criminal proceeding before Ld. Executive Magistrate is not impermissible even if civil suit is pending before the Civil Court in regard to the same subject matter. However, in the present case, continuation of criminal proceeding before Ld. Executive Magistrate is not permissible in view of the facts and laws as discussed above.

59. Accordingly, the present petitioner, being bereft of merit is dismissed *in limine*, upholding the impugned order dated

16.05.2016, passed by Ld. Additional Sessions Judge-IV, Aurangabad, in Cr. Revision No. 48 of 2015 (6 of 2015), except the direction for further enquiry. The criminal proceeding under Section 145 Cr. P.C. pending before Ld. Executive Magistrate, Aurangabad is also quashed, setting aside the order dated 16.05.2015 and 14.10.2014, passed by him in criminal proceeding bearing No. 1629 of 2014 (22 of 2015).

(Jitendra Kumar, J.)

ravi/Amrendra

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