IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.754 of 2021

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1. Mahadev Yadav, aged about 66 years, Son of Late Dilo Yadav.
2. Santosh Yadav, aged about 40 years, Son of Mahadeo Yadav.
3. Kapildeo Yadav, aged about 35 years, Son of Mahadeo Yadav

   All are R/o Sri Nagar, P.O.- Barsot, P.S.- Barhi, District- Hazaribagh.

… Petitioners

Versus

1. The State of Jharkhand
2. The S.D.M., Barhi, P.O., P.S. – Barhi, District Hazaribagh
3. Munni Devi, W/o Indra Vishwakarma, R/o Village – Barhi (Lohartoli), Dhanbad Road, P.O., P.S.- Barhi, District- Hazaribagh.
4. Chandan Kumar Vishwakarma, S/o Indra Vishwakarma, R/o Village – Barhi (Lohartoli), Dhanbad Road, P.O., P.S.- Barhi, District- Hazaribagh.
5. Kundan Kumar Vishwakarma, S/o Indra Vishwakarma, R/o Village – Barhi (Lohartoli), Dhanbad Road, P.O., P.S.- Barhi, District- Hazaribagh.

… Opposite Parties

For the Petitioners : Ms. Aprajita Bhardwaj, Advocate
Ms. Khushi Mahendru, Advocate
For the State : Mr. Pankaj Kumar, P.P.
For the O.P. No.3 to 5 : Mr. Nilendu Kumar, Advocate
Mr. Binod Singh, Advocate
Mr. Kumar Vishwambhar, Adv.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with the prayer to quash the order dated 08.02.2021 passed by the learned Additional Sessions Judge-III, Hazaribagh in Criminal Revision No. 67 of 2020 whereby and where under the learned Additional Sessions Judge-III, Hazaribagh found no illegality in the order dated 23.11.2020 passed by the learned Sub-Divisional Magistrate, Barhi in Misc. Case No. 01 of 2020 by which the learned Sub-Divisional Magistrate, Barhi directed that with the help of the Administration, arrangement shall be made for the members of the first party namely Munni Devi and her two children to reside in the disputed house.

3. Learned counsel for the petitioners submits that it is the admitted case of the parties that the members of the first party were dispossessed from the disputed house on 12.10.2020. They approached the Sub-Divisional Magistrate, Barhi on 13.10.2020. The police report was obtained on 13.10.2020. So, as on the date of

approaching the court and initiation of proceeding under Section 145 of the Code of Criminal Procedure, admittedly, the members of the first party were not in possession of the disputed property; in exercise of the power under Section 145 of the Code of Criminal Procedure, they ought not to have been put in possession of the said house in exercise of the power by the Executive Magistrate. It is next submitted that in para-11 of the impugned judgment, the learned Additional Sessions Judge-III, Hazaribagh has misinterpreted the first proviso of Section 145(4) of the Code of Criminal Procedure by committing an error apparent on the record by omitting the word "Next" between the two words "two months" and 'before' appearing in the first proviso of Section 145(4) of the Code of Criminal Procedure. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

4. Learned Public Prosecutor appearing for the State and the learned counsel for the opposite party No.3 to 5 on the other hand submit that even if a person is not in possession of the disputed property on the date of preliminary order, still he can be put in possession over the disputed property by the Executive Magistrate in exercise of its power under Section 145 of the Code of Criminal Procedure. Hence, it is submitted that no illegality has been committed by the learned Additional Sessions Judge-III, Hazaribagh in passing the said order dated 08.02.2021 in Criminal Revision No. 67 of 2020. It is lastly submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

5. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Bhinka & Others vs. Charan Singh** reported in **AIR 1959 SC 960**, para-13 of which reads as under:-

> *"13. Can it be said that the appellants had taken possession in accordance with the provisions of S. 145 of the Code of Criminal Procedure? The short answer is that S. 145 of the said Code does not confer on a Magistrate any power to make an order directing the delivery of possession to a person who is not in possession on the date of the preliminary order made by him under S. 145 (1) of the Code. Under S. 145 (1) of the Code, his jurisdiction is confined only 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 a specified date and does not purport to give possession or authorise any party to take possession. Even in the case of any party who has been forcibly and wrongfully dispossessed within two months next before the date of the preliminary order, the Magistrate is only authorised to treat that party who is dispossessed as if he had been in possession on such date. If that be the legal position, the appellants could not have taken possession of the disputed lands by virtue of an order made under the provisions of S. 145 of the Code of Criminal Procedure. They were either in possession of not in possession of the said lands on the specific date, and, if they were not in possession on that date, their subsequent taking possession thereof could not have been under the provisions of the Code of Criminal Procedure." (Emphasis supplied)*

a*lbeit* in connection with Section 145 of the Code of Criminal Procedure, 1898 but Section 145(4) of the Code of Criminal Procedure, 1898 is having similar verbatim as that of Section 145(4) of the Code of Criminal Procedure, 1973, by apparent exercise of which power the impugned order has been passed.

6. In para-13 of the said judgment of the Hon'ble Supreme Court of India in the case of **Bhinka & Others vs. Charan Singh (supra)**, it has categorically been held by the Hon'ble Supreme Court of India that Section 145 of the Code of Criminal Procedure does not confer on a Magistrate any power to make an order directing the delivery of possession to a person who is not in possession on the date of preliminary order made by him under Section 145(1) of the Code of Criminal Procedure. That being the settled principle of law, this Court is not inclined to accept the submission of the learned Public Prosecutor appearing for the State and the learned counsel for the opposite party No.3 to 5 that the provision of Section 145 of the Code of Criminal Procedure, can be pressed into service to make an order by the Executive Magistrate directing delivery of the possession of a disputed property to the person, who is not in possession on the date of preliminary order. The learned Additional Sessions Judge-III, Hazaribagh has also committed a grave illegality by overlooking this settled principle of law.

7. Hence, this Court is of the considered view that this is a fit case where the order dated 08.02.2021 passed by the learned Additional Sessions Judge-III, Hazaribagh in Criminal Revision No. 67 of 2020 be quashed and set aside as the same is not sustainable in law.

8. Accordingly, the order dated 08.02.2021 passed by the learned Additional Sessions Judge-III, Hazaribagh in Criminal Revision No. 67 of 2020, is quashed and set aside.

9. In the result, this Criminal Miscellaneous Petition is allowed.

10. The case is remitted to the court of the learned Additional Sessions Judge-III, Hazaribagh or its successor court to pass a fresh order in accordance with law.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 22nd of December, 2025
AFR/ Saroj

Uploaded on 03/01/2026