



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**924 CRIMINAL WRIT PETITION NO. 1584 OF 2024**

Pradeep pandurang Jadhav,  
Age : 43 years, Occu: Agri/Business,  
R/o. Plot No. 19, Walchand Bapuji Nagar,  
Dhule, Dist. Dhule.

**...Petitioner**

**versus**

- 1) The State of Maharashtra  
Through Secretary, Dept. of Home Affairs,  
Mantralaya, Mumbai
- 2) The Police Inspector  
Mohadi Nagar Police Station,  
Dhule.
- 3) Kavita Shivajirao Khairnar  
Age: 57 years, Occu: Household,
- 4) Shivaji Shenpadu Khairnar  
Age: 68 years, Occu: Service  
Resp No. 3 & 4 R/o. Pandav Nagar, Nagaon Bari,  
Dhule, Dist. Dhule.
- 5) Anil Prabhakar Deshmukh  
Age: 68 years, Occu: Business
- 6) Sunil Prabhakar Deshmukh  
Age: 42 years, Occu: Business  
Resp No.5 & 6 R/o. Plot No.11,  
Shriram Colony, Sakri road, Dhule,  
Dist. Dhule.

**...Respondents**

....

Mr. Mahesh Kalidasrao Bhosle, Advocate for the Petitioner  
Ms. Chaitali Chaudhari-Kutti, APP for Respondent-State  
Mr. H. V. Tungar h/f Mr. S. A. Kulkarni, Advocate for Respondent  
No.2

....

**CORAM : Y. G. KHOBRAGADE, J.**

**DATE : 03.01.2025**

**Oral Judgment :-**

1. Rule. Rule made returnable forthwith. With the consent of both the sides, it is heard finally at the stage of admission.
2. By the present Petition, the Petitioner takes an exception to the order dated 02.08.2024 passed by the learned Sub-Divisional Officer in Criminal Procedure Code 145 APPEAL/151A of 2024 (Mohadi Upnagar).
3. Having submissions canvassed on behalf of both the sides and on perusal of record, only issue arises is that, Whether the Sub-Divisional Officer having appellate jurisdiction to entertain the appeal arising out of order passed under Section 145 of the Criminal Procedure Code by the learned Executive Magistrate?
4. On face of record, it appears that, on 08.06.2023, the informant lodged an oral report with Respondent No.2 Mohadi Upnagar Police Station, Dhule alleging that, she had started construction on plot No.19, situated in Survey No.13. The contract of construction was given to the Respondent Nos. 5 and 6. As per the agreement, the Respondent Nos.5 and 6 were supposed to complete

the work and to handover possession on 31.01.2011. The Informant further alleged that though she paid entire amount of the work under the contract, however, the building material including teak wood and remaining material were shifted at some other place without her consent. When she inquired with the Respondent Nos. 5 and 6 about the same, they demanded extortion of money of Rs.5 Lakhs. So also, the Respondent Nos. 5 and 6 entered into an agreement with the help of present Petitioner Pradeep Pandurang Jadhav and illegally sold her bungalow/house. On the basis of said report a Crime No.160 of 2015 was registered with Respondent No.2 Mohadi Upnagar Police Station, Dhule. The Respondent No.3 informant further alleged that, the Respondent Nos. 5, 6 and the Petitioner in collusion got executed sale deed of her house on the basis of false and fabricated documents and handed over possession of her house in favour of the Petitioner. On the basis of said Report, the A. P. I. of Mohadi Upnagar Police Station submitted a proposal under Section 145 of the Criminal Procedure Code with the Executive Magistrate, Dhule for necessary action.

5. On 07.11.2023, the learned Executive Magistrate, Dhule provided opportunity of hearing to both sides i.e. Petitioner and Respondent Nos. 3 to 6. The learned Executive Magistrate held that

the Respondent Nos.3 & 4 Kavita Shivajirao Khairnar (informant) and Shivaji Shenpadu Khairnar have already filed Special Civil Suit No.76 of 2015 before the Civil Court in respect of same property which is the subject matter of the Report lodged by the Respondent No.3 and the said suit is pending. Therefore, as per the provisions of Section 145 of the Criminal Procedure Code, the learned Executive Magistrate has declined to pass any protective order, however, parties to the proceeding are directed to maintain Law and Order.

6. Being aggrieved by the said order, the present Respondent Nos. 3 and 4 filed Appeal before the Sub-Divisional Officer. On 02.08.2024, the Sub-Divisional Officer passed the impugned order and held that, since 2011 civil dispute is in existence in respect of plot No.19 out of survey No.13. The said plot is mutated in the name of Respondent No.3, but the said plot is in possession of the present Petitioner. Since Civil Suit is pending before the Civil Court pertaining to the said plot, hence, disposed off proceeding, however, both the parties are directed to maintain law and order.

7. No doubt, the learned counsel appearing for the Respondent Nos. 3 and 4 canvassed that, during the pendency of Appeal before the Sub-Divisional Officer, the Petitioner has filed

application for disposal of the appeal for want of jurisdiction and the Respondent Nos. 3 and 4 replied the said application. The Respondent Nos. 3 and 4 specifically stated that under Section 59(a) of the Maharashtra Land Revenue Code, the Sub-Divisional Officer having jurisdiction to entertain the appeal against the order passed by the Executive Magistrate under Section 145 of the Criminal Procedure Code, therefore, the learned Sub-Divisional Officer passed the impugned order and appeal is maintainable before the Sub-Divisional Officer.

8. In the case of ***K. Pounrajan V. Collector, Chennai District, Chennai and others, 2003 SCC Online mad 938 : 2004 Cri LJ 1465*** the Madras High Court in Para Nos. 15 to 18 observed as under.

*15. At the outset the big question that would arise in the mind of everyone is 'whether the police could register a case under Section 145, Cr.PC. as it comes to be seen in the registering of the case in Cr. No. 1055/2002 by K-10 Koyambedu Police? A complaint could be given by the aggrieved party and the case could be registered only under the specific provisions of the criminal law for commission of certain specific offences and this Court wonders how a case under Section 145, Cr.PC. could be registered by the police wherein nowhere it is provided under law for case to be registered under Section 145, Cr.PC. by the police.*

16. Secondly, the object sought to be achieved under Section 145, Cr.P.C. being prevention of breach of peace and tranquility in the area, the Executive Magistrate concerned is only empowered to initiate a proceeding under Section 145, Cr.P.C. either based on a report by the police or on his own information and on being satisfied that there exists a breach of peace and tranquility to the subjects regarding a dispute concerned with the land, water, fisheries, market place etc. the said Magistrate, in order to prevent the breach of peace and tranquility to the subjects, could initiate such proceeding within his jurisdiction.

17. Thirdly, the upper forums of law have time and again decided that when a civil case has already been initiated and a restraint order has been passed by the civil form regarding the same subject matter, no proceeding under Section 145, Cr.P.C. would arise and the Executive Magistrate is not entitled to initiate a proceeding of that nature.

18. Fourthly, if on such a proceeding initiated under Section 145, Cr.P.C. any order is passed by the Executive Magistrate, whether he is the Taluk Magistrate or the Sub Divisional Executive Magistrate, the same could be testified only on revision before the High Court within the powers conferred on the jurisdiction High Court under Sections 397, 401, 482, etc. and no other authority, much less the District Collector, has been conferred with any power to testify the validity of the order passed by the Executive Magistrate much less on appeal.

9. In the case of ***Yadaorao Nathuji Kokude V. State of Maharashtra and Others, 1976 Mh.L.J. Page 31*** in para No.13 observed as under.

13. In my opinion, neither under the old Code or new Code of Criminal Procedure a right is conferred on any party to invoke the revisional jurisdiction of the High Court. Therefore, no vested right of the party is affected by the changes effected in the new Code which gives powers to Sessions Judges to call for and examine the record of any proceeding before any inferior Criminal Court situate within their local jurisdiction as provided in section 397 to 399 of the new Code. In respect of the revisional powers I may refer to the observations of the Supreme Court in *Pranab Kumar Mitra v. State of West Bengal* which are as under:

"The revisional powers of the High Court vested in it by section 439 of the Code read with section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction abuse their powers vested in them by the Code." It will be clear, therefore, that to file a revision is not a right in the litigant and as I have stated earlier, section 484 does not save such a right of litigant to say that he has a right to file revision application against an order which has been passed after coming into force of the New Code by following the provisions of the old Code of Criminal Procedure. In my opinion, as the decision was given after coming into force of the New Criminal Procedure Code, in the instant case, the non-applicants filed a revision application in the Sessions Court as provided under section 399 of the new Criminal Procedure Code. They were perfectly justified in doing it and the learned Additional Sessions Judge was also perfectly justified in entertaining it after it was made over to him for disposal by the learned Sessions Judge, Bhandara. 1, therefore,

*hold that there is no merit in the contention of the learned Advocate that the Additional Sessions Judge Bhandara, or the Sessions Judge, Bhandara had no initial jurisdiction to entertain the revision application.*

10. In the case in hand, the Respondent Nos. 3 and 4 questioned the legality and validity of order dated 07.11.2023 passed by the learned Executive Magistrate, Dhule under Section 145 of the Criminal Procedure Code before the Sub-Divisional Officer which has no jurisdiction as per law laid down in the case of ***K. Pounrajan V. Collector, Chennai District, Chennai and Yadaorao Nathuji Kokude, cited (supra).***

11. Section 59 of the Maharashtra Land Revenue Code provides for summary eviction of person unauthorisedly occupying land, which is as under:

*Any person unauthorisedly occupying, or wrongfully in possession of any land-*

*(a) to the use or occupation of which by reason of any of the provisions of this Code he is not entitled or has ceased to be entitled, or*

*(b) which is not transferable without the previous permission under sub-section (2) of Section 36 or by virtue of any condition lawfully annexed to the tenure under the provisions of Sections 31, 37 or 44, may be summarily evicted by the Collector.*

12. Sec. 247 (1) of the Maharashtra Land Revenue Code provides for Appeal and appellate authorities, which reads as under :

*(1) In the absence of any express provisions of the Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of the Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column 1 of the said Schedule: Provided that, in no case the number of appeals shall exceed two.*

13. On the plain reading of Sec. 59 and 247 of Maharashtra Land Revenue Code it appears that, the learned Sub-Divisional Officer is not entrusted with the appellate powers to testify correctness, legality and validity of order passed by the learned Executive Magistrate u/s 145 of the Cr. P. C.. However, in the case in hand, the learned Sub-Divisional Officer exercised powers being appellate authority and passed the impugned order on 02.08.2024, which is apparently without jurisdiction and non est, hence, it is liable to be quashed and set aside. Accordingly, the impugned order dated 02.08.2024 passed by the learned Sub-Divisional Officer is hereby quashed and set aside. The Writ Petition is allowed in terms of prayer Clause (B). Accordingly, Rule is made absolute.

**[ Y. G. KHOBRADE, J. ]**