

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 38 OF 2024**

Sameer Bashir Jamadar

..Petitioner

Versus

Abhijeet Jagannath Bidkar and
Ors

...Respondents

Mr. Vikas Shivarkar, for petitioner.

Mr. Ganesh Misal (through VC) a/w. Rohit Chavan, for
respondent No. 1.

Mr. P. P. Malshe, APP for Respondent No. 2 – State.

CORAM: N. J. JAMADAR, J.

DATE : 04th DECEMBER 2025

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 19th March, 2020 passed by the learned Additional Sessions Judge, Pune in Criminal Revision Application No. 139/2020 against an order passed by the Sub-Divisional Magistrate under Section 145 of the Code of Criminal Procedure, 1973 recording that the respondent No. 1 is in possession of the subject plot No. 10 and the said plot shall remain in the possession of Respondent No. 1 till the decision of the civil proceedings.

3. Mr. Shivarkar, learned Counsel for the petitioner, submitted that, the impugned order as well as order passed by the Sub-Divisional Magistrate suffer from manifest error as the Civil Court in the earlier suit has held that, the plaintiff is the owner of the said plot. However, since the plaintiff failed to establish that, the defendants had encroached upon the said plot, the said suit i.e. R.C.S. No. 5353/2012, came to be dismissed.

4. When the matter was listed before this Court on 22nd July, 2025, this Court had opined that, the scope of inquiry in this petition was limited to the question: whether there was proper service of notice of the proceeding under Section 145 ? and whether the Respondent No. 1 had made out a case for passing of the impugned order ?

5. Mr. Shivarkar submitted that, even if it is assumed that the notice was duly served on the Petitioner, on merits, the Sub-Divisional Magistrate could not have passed the order declaring that, the Respondent No. 1 is in possession of the subject plot. It was further submitted that, the Sub-Divisional Magistrate has not recorded a finding that there was a likelihood of breach of peace.

6. The Sub-Divisional Magistrate has noted that, complaints and cross-complaints were filed by the parties and there was an imminent possibility of breach of peace. The learned Sessions Judge has also recorded that, in the circumstances of the case, the satisfaction recorded by the Magistrate that there was a likelihood of breach of peace cannot be faulted at.

7. The Respondent No. 1 has instituted a suit seeking declaration that the judgment and order in RCS No. 5353/2012 does not bind him.

8. In the backdrop of these facts, at this stage, this Court does not find any propriety in entertaining the petition against an order passed under Section 145 of the Code of Criminal Procedure. So far as the finding recorded by the Sub-Divisional Magistrate that the defendant-Respondent No. 1 is in possession of the plot No. 10, it would be suffice to clarify that, the said finding was confined to action initiated under Section 145 of the Code of Criminal Procedure, 1973 and will not come in the way of petitioner in civil proceedings.

9. Subject to aforesaid clarification, the petition stands disposed.

[N. J. JAMADAR, J.]