



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.1735 OF 2024

Chinnu Jalpate Surpam

Vs.

The State of Maharashtra through its Sub-Divisional Officer, Rajura, Tq.
Rajura, Dist. Chandrapur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.S. Bhoyar, Advocate for Applicant.
Shri N.R. Rode, APP for respondent no.1.
Ms Kirti Satpute, Advocate for respondent no.2.

CORAM : M.W. CHANDWANI, J.

DATE : 24.04.2025.

1. The order dated 15.10.2024 passed by the learned Additional Sessions Judge, Chandrapur in Criminal Revision No.27/2022 has been challenged in this application.

2. By the impugned order, the order dated 22.03.2022 passed by the Sub-Divisional Magistrate (SDM) under Section 145 of the Code of Criminal Procedure (for short, "CrPC") in Criminal Case No.2/CrPC-145/2021 has been set aside.

3. A brief background of the case is that, the applicant claiming himself to be the owner of agriculture land Survey no.142 admeasuring 0.20 H.R. lodged a complaint with the Tahsildar, Rajura complaining that non-applicant no.2 is disturbing his possession of the agricultural field. The Tahsildar referred the said complaint to the concerned police station and after conducting enquiry, felt that there is possibility of breach of peace and therefore, sent over the

case to the SDM, Rajura under Section 145 of the CrPC. The SDM after conducting enquiry proceeded to hold that the possession of non-applicant no.2 is not legal since the document of sale is not a registered one and directed to non-applicant no.2 to vacate the said agricultural field. The order of the SDM was carried in revision by non-applicant no.2. The learned Judge by the impugned order held that the SDM has exceeded its jurisdiction by directing non-applicant no.2 to return the possession of the agricultural field to the applicant and set aside the order passed by the SDM by allowing the revision. The order passed by the learned Addition Sessions Judge, Chandrapur is under challenge in this application.

4. It is a settled position of law that power under Section 145 of the CrPC is the only provision wherein, the criminal courts/Magistrate is empowered to pass an order in respect of immovable property. The object of giving such power under Section 145 of CrPC is to maintain law and order and more particularly to prevent breach of peace by the parties in dispute relating to immovable property. The scope of enquiry under Section 145 of CrPC is only to enquire who is in actual possession of the disputed land on the date of passing of the preliminary order. The SDM is not authorized to go into the merits of the dispute to decide the title of the disputed immovable property. It is the civil court which alone has jurisdiction to decide the dispute relating to title of any immovable property. Whereas, in the present case, the SDM, Rajura proceeded to hold that the alleged

sale-deed is unregistered and insufficient in stamp and therefore, held that it is invalid and directed non-applicant no.2 to hand over the possession of the agricultural land to the applicant. This is clearly in violation of the settled principle of law and beyond the scope of Section 145. Therefore, I do not see any reason to interfere with the reasoned order passed by the learned Additional Sessions Judge, Chandrapur.

5. At this stage, it is submitted on behalf of the applicant that the findings with regard to possession of agricultural land by the SDM are without any material therefore, the matter be remanded back to the SDM, Rajura for deciding it afresh.

To buttress his submission, he seeks to rely on the case of *Shamim Alam Vs. Sajjid Hussain and another*¹, wherein, the Supreme Court has held that SDM should have given specific reasons with reference to the material placed on record rather than making a bald observation that the respondent is in possession of the property and the police report is not the final word and the Magistrate ought to apply his mind independently.

6. Since the statement of the applicant himself reveals that the possession of the disputed agricultural land was forcibly taken by non-applicant no.2 two years back, nothing remains in the matter to inquire who is in possession of the disputed agricultural land. In the case of *Shami Alam*

¹ (2005) 10 SCC 551

(supra) relied upon by the learned counsel for the applicant, in the enquiry report, the police had opined the possession with regard to the disputed property; whereas, in the present case, the applicant himself has admitted before the police that the possession of the disputed property is with non-applicant no.2.

7. Let me state that the applicant has not challenged the findings recorded by the SDM that the possession of the agricultural land is with non-applicant no.2. The revision has been filed against the order of learned Additional Sessions Judge, Chandrapur by which the order of the SDM has been set aside.

8. Be that as it may, the fact remains that the statement of applicant filed by non-applicant no.2 before the police reveals that the applicant has stated to the police that non-applicant no.2 has forcibly taken possession of the agricultural field since last two years and inspite of requests, he has not returned the agricultural land to the applicant. This statement itself goes to show that the possession of disputed agricultural land is with non-applicant no.2.

9. In view of above discussion, I do not find any merit in the submission of the learned counsel for the applicant. Therefore, the application is devoid of merits and hence it is **rejected**.

JUDGE

Wagh