

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.41314 of 2016

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

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1. Ram Padarath Singh Son of Late Bansi Singh
2. Sri Kant Singh Son of Sri Ram Padarath Singh
3. Ganesh Singh Son of Sri Ram Padarath Singh
4. Sanjay Kumar @ Sanjay Singh Son of Sri Ram Padarath Singh
5. Aditya Singh Son of Sri Ram Padarath Singh

All residents of village - Kajhiya, Police Station- Akbarpur, in the district of Nawada

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sarojani Devi Wife of Sri Jay Nandan Prasad Singh, resident of village - Kajhiya, Police Station Akbarpur, in the district of Nawada

... .. Opposite Party/s

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Code of Criminal Procedure---section 144-148, 482---Jurisdiction of Executive Magistrate u/s 145, 146 Cr.PC.----petition to quash revisional order whereby and whereunder order of the Executive Magistrate attaching the landed property of Petitioner was upheld--*Findings*: after making preliminary order u/s 145(1) Cr.PC, the Executive Magistrate can attach the subject property if he considers the case to be one of emergency---the case of emergency as contemplated under Section 146(1) Cr.PC connotes much more than mere apprehension of breach of peace---when breach of peace appears to be imminent, only then the situation could be termed as "emergency"--- bare reading of Section 146(1) Cr.PC shows that order u/s 146 Cr.PC passed by learned Executive Magistrate is dependent upon the preliminary order passed u/s 145(1) Cr.PC, hence, defects in the preliminary order passed u/s 145(1) Cr.PC would make the order passed u/s 146(1) Cr.PC without jurisdiction and erroneous in law---inquiry under Section 145 Cr.PC is limited to the question as to who was in the actual possession on the date of the report or information, irrespective of the title to the property and

right to possess the same and its purpose is to provide a speedy and summary remedy so as to prevent a breach of peace by submitting the dispute to the Executive Magistrate---condition precedent for initiating proceeding under Section 145 Cr.PC is satisfaction of the Executive Magistrate regarding apprehension of breach of public peace on account of dispute relating to the actual possession of the subject property---concept of public peace and tranquillity is much wider concept than instances of tension between few individuals arising out of private disputes---if the effect of any dispute is confined only to few individuals who are parties to the dispute, such dispute could not give any apprehension of breach of public peace and tranquillity; such private civil disputes comes within exclusive jurisdiction of Civil Court---Executive Magistrates are expected to refrain from encroaching upon jurisdiction of Civil Courts and invoke their jurisdiction under Section 145 Cr.PC only in cases where there is apprehension of breach of public peace and tranquillity---if a Civil Suit regarding title and possession is pending in regard to the property in question in a Civil Court, a parallel proceeding under Section 145 Cr.PC is not permissible---as per the facts and circumstances as emerging from the report of the Circle Officer in the present case, at most there was private dispute between the parties in regard to the landed property in question for which the parties were required to move Civil Court---there was no occasion for the Executive Officer to pass the preliminary order under Section 145 Cr.PC and, as such, it vitiates the subsequent impugned order passed under Section 146(1) Cr.PC---in the impugned order, learned Executive Magistrate has not referred to such material facts and circumstances which may be termed as emergent situation---impugned order set aside---petition allowed. (Para- 18, 19, 22, 26, 27, 28, 37-39)

2008 (3) PLJR 604, 1998 Cri.L.J. 3794, 1978 Cri.L.J. 671, (2013) 3 PLJR 392, (2013) 3 SCC 366, 2013 SCC Online All 4840, (2013) 2 Gauhati Law Reports 837, 2012 Cri.L.J. (NOC) 375 (Gau), (2004) 1 SCC 438, (2002) 3 SCC 700, (1994) 1 SCC 471, (1978) 1 SCC 210, 1968 SCC Online SC 5, AIR 1959 SC 960, (2008) Cri.L.J. (NOC) 479 (Gau), 1993 MHLJ 1409, 1982 SCC Online Gau 35, (2006) 11 SCC 66, 2006 (2) PLJR 181, (2006 SCC Online Pat 263), 2005 (2) PLJR 506, (2004) 13 SCC 421, (2001) 10 SCC 758, (2000) 4 SCC 440, (2000) 3 PLJR 90, 2000 SCC Online Pat 1095, (1994) 1 SCC 471, (1985) 1 SCC 427

.....**Referred To.**

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- All residents of village - Kajhiya, Police Station- Akbarpur, in the district of Nawada

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sarojani Devi Wife of Sri Jay Nandan Prasad Singh, resident of village - Kajhiya, Police Station Akbarpur, in the district of Nawada

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Mr. Jay Prakash Singh, Advocate
For the State	:	Mr. Sanjay Kumar Pandey, APP
For the O.P. No.2	:	Mr. P. N. Shahi, Sr. Advocate Mr. Manish Kumar No.2, Advocate Mr. Aryan Singh, Advocate Mr. Ram Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

Date : 28-01-2025

The present petition, under Section 482 Cr.PC, has been preferred by the petitioners against the impugned order



dated 16.05.2016, passed by learned Additional Sessions Judge-III, Nawada in Criminal Revision No. 44 of 2015 / 16 of 2016, whereby learned Sessions Court had dismissed the revision petition finding no illegality in the order dated 27.10.2014 passed by learned Sub-Divisional Magistrate, Rajauli, District-Nawada in proceeding bearing No. 1M of 2014, whereby learned Executive Magistrate has attached the subject landed property.

2. The factual background of this case is that the opposite party No.2 herein, Sarojani Devi, filed one petition bearing Proceeding No. 50M of 2013 before learned Sub-Divisional Magistrate for initiating proceeding under Section 144 Cr.PC and thereupon, the proceeding under Section 144 Cr.PC was initiated. However, after hearing both the parties, learned Executive Magistrate closed the proceeding under Section 144 Cr.PC and advised the parties to prefer Title Suit before Civil Court, if so advised.

3. Subsequently, the said Sarojani Devi filed one petition under Section 145 Cr.PC, before learned Sub-Divisional Magistrate on 07.12.2013 against the petitioners herein in regard to landed property measuring 1 Acre 37 decimal bearing Khata No. 135 and Plot No. 1544, 1546, 1546/2249, alleging that the



petitioners herein were bent upon to forcibly dispossess her which might lead to breach of peace. In pursuance of this petition, learned Executive Magistrate called for report from Officer-in-charge and Circle Officer within a week. Subsequently, Circle Officer submitted his report stating that the purchasers of the lands are in possession, but there is dispute among the parties in regard to title to the property. However, he reported that on account of the dispute, there is apprehension of breach of peace.

4. On the basis of the said report of the circle officer, learned Executive Magistrate passed the impugned order dated 28.01.2014, initiating proceeding under Section 145 Cr.PC observing that on the basis of the report of the Circle Officer, there is dispute between the parties in regard to possession which may lead to breach of peace. The parties were also directed to be informed about the proceeding.

5. Later on, the O.P. No.2 herein, Sarojani Devi, moved an application dated 22.10.2014 before learned Executive Magistrate for attachment of the subject landed property, stating that paddy crop is standing on the land and the petitioners herein were bent upon to harvest the same, which may lead to bloody occurrence. Subsequently, learned Executive



Magistrate passed the impugned order dated 27.10.2014, attaching the subject landed property under Section 146(1) Cr.PC and appointing the Officer-in-charge of the local Police Station as the receiver, observing that from perusal of the application, it appeared that there was tension between the parties and the possibility of breach of peace could not be ruled out. He also observed in the impugned order that there was confusion regarding the possession over the land and there was possibility of breach of public peace.

6. The order of attachment dated 27.10.2014 was challenged by the petitioners herein in Criminal Revision bearing No. 44 of 2015/ 16 of 2016 before Sessions Court. However, Revision petition was dismissed and the order of attachment was upheld. Hence, the present petition.

7. It also transpires from the record that Sarojani Devi, O.P. No. 2 herein, has also filed one Civil Suit bearing Title Suit No. 05 of 2014 in the Court of learned Sub Judge-I, Nawada on 02.01.2014 for confirmation of the possession of the subject landed property in regard to 28½ decimal of the land bearing Khata No. 135 and Plot No. 1544, 1546, 1546/2249, which is pending consideration of the Court.

8. I heard learned counsel for the petitioners, learned



APP for the State and learned Senior counsel for the Opposite Party No.2.

9. Learned counsel for the petitioners submits that the impugned orders are not sustainable in the eye of law. To substantiate his submission, he further submits that on the basis of the alleged facts and circumstances of the case, initiation of proceeding under Section 145 Cr.PC was not warranted. Hence, the initiation of proceeding under Section 145 Cr.PC itself is vitiated for want of foundational facts and circumstances for initiating the proceeding. Executive Magistrate assumes jurisdiction under Section 145 Cr.PC only when there is dispute regarding actual possession and there is an attempt to forcibly dispossess the party in possession. But as per the report of the Circle Officer, purchasers of the land are already in possession, though there is rival claim regarding right and title to the property and right to possession thereof. Hence, such dispute does not come within the purview of Section 145 Cr.PC. It is subject of the jurisdiction of Civil Court and O.P. No.2, Sarojni Devi has already filed a civil suit in regard to title to the property and right to possession thereof.

10. He further submits that as per the alleged facts and circumstances, there is no apprehension of breach of public



peace and tranquility. At most, it is private dispute involving parties to the dispute. No public at large are affected by or involved in the dispute. Moreover, the dispute is in regard to the title to the property and right to possession thereof which is subject matter of Civil Court and not that of Executive Magistrate under Section 145 Cr.PC.

11. He further submits that Civil Suit is already pending between the parties regarding title and right to possession in regard to the property and parallel proceeding under Section 145 Cr.PC and attachment of the subject property is unwarranted and not sustainable in the eye of law. Both the proceedings cannot go simultaneously.

12. He further submits that emergent situation is *sine qua non* for attachment of the subject landed property under Section 146(1) Cr.PC and learned Executive Magistrate is required to state the facts which show that there is emergent situation requiring attachment of the subject landed property. However, there is no such details of the material facts and circumstances in the impugned order of learned Executive Magistrate to show that there was emergent situation.

13. However, learned APP for the State and learned Senior counsel for the O.P. No. 2 defend the impugned order



submitting that there is no illegality or infirmity in it and hence, the present petition is liable to be dismissed.

14. Learned senior counsel for the O.P. No. 2 further submits that Civil Suit pending before the Civil Court is in regard to only small part of the land which is subject matter of the proceeding under Section 145 Cr.PC.

15. He further submits that as per the allegation, on account of dispute regarding title and possession, there is apprehension of breach of public peace. Hence, the proceeding pending before the learned Magistrate is maintainable and there is no infirmity in the impugned order.

16. I considered the rival submissions of the parties and perused the materials on record.

17. Here, the question to be considered by this Court is whether the attachment of the subject landed property under Section 146(1) is sustainable in the eye of law or not? Section 146 Cr.PC reads as follows:-

“146. Power to attach subject of dispute and to appoint receiver.—(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof.



Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908;

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate—

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.”

(Emphasis supplied)

18. It clearly emerges that after making preliminary order under Section 145(1) Cr.PC, the Executive Magistrate can attach the subject property in the following three situations as per Section 146(1) Cr.PC:

(i) If he considers the case to be one of emergency, or

(ii) If he decides as per the inquiry that none of the parties was in possession of the subject property in terms of Section 145 Cr.PC, or

(iii) If he is unable to satisfy himself as to which of the parties then in possession of the dispute.

19. Here, it would be also pertinent to point out that



the case of emergency as contemplated under Section 146(1) Cr.PC connotes much more than mere apprehension of breach of peace. When breach of peace appears to be imminent, only then the situation could be termed as “emergency”. Moreover, the Executive Magistrate is required to refer to the material facts and circumstances in his order showing emergent situation so that the higher court could independently assess the situation and test objectively whether the Executive Magistrate has applied his judicial mind for recording his satisfaction. In this regard, one may also refer to the following judicial precedents:

(i) **Ram Swarup Prasad Vs. State of Bihar**
2008 (3) PLJR 604

(ii) **Chandra Saxena Vs. VI Additional Sessions Judge**
1998 Cri.L.J. 3794

(iii) **Amrit Singh Vs. Gyandeo Sharma**
1978 Cri.L.J. 671

20. It also transpires from Section 146(1) Cr.PC that such attachment of the dispute continues till a competent Court determines who has right and title to the property and right to possession thereof. However, the Executive Magistrate is also empowered to withdraw the attachment at any time, if he is satisfied that there is no longer any likelihood of breach of peace with regard to the subject of dispute.

21. Sub-Section (2) of Section 146 provides that if no



receiver in relation to the subject of the dispute has been already appointed by any Civil Court, he may make arrangement as he considers appropriate for looking after the property or he may appoint a receiver thereof, subject to his control. However, if receiver is appointed subsequently by Civil Court, the Magistrate is required to order the receiver so appointed by him to handover the possession of subject of the dispute to the receiver as appointed by Civil Court, discharging the receiver appointed by him.

22. The bare reading of Section 146(1) Cr.PC shows that order under Section 146 Cr.PC passed by learned Executive Magistrate is dependent upon the preliminary order passed under Section 145(1) Cr.PC. Hence, defects in the preliminary order passed under Section 145(1) Cr.PC would make a subsequent proceeding including the order passed under Section 146(1) Cr.PC without jurisdiction and erroneous in law. [Also refer to **Shrikant Prasad @ Chirkut Sah Vs. The State of Bihar (2013) 3 PLJR 392**]

23. Now, question is what is the extent and scope of jurisdiction of Executive Magistrate under Section 145 Cr.PC. Section 145 Cr.PC reads as follows:-

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.- (1)
Whenever an Executive Magistrate is satisfied from a



report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he 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.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference of the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute :Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of this order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4)



be treated as being, in such 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; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.”

(Emphasis supplied)

24. Section 145 Cr.PC comes under Chapter X of Cr.PC, 1973, dealing with maintenance of public order and tranquility and Sections 145 to 148 Cr.PC deal with dispute as to immovable property.



25. From the perusal of Sections 145 to 148 Cr.PC, it clearly transpires that the statutory provisions therein are meant to maintain public order and peace by empowering the Executive Magistrate to take preventive measures in case of apprehension of breach of public peace on account of dispute as to actual possession of the land or water. When the Executive Magistrate is satisfied from the report of Police Officer or any other information that such dispute is likely to cause a breach of peace, he can initiate proceeding under Section 145(1) Cr.PC, stating the ground of such satisfaction and take steps to hear the parties concerned in regard to the actual possession of the subject of the dispute. However, during such hearing, the Magistrate is not required to examine title or right of any party to possess the subject of the dispute, but only to find out which of the party was in actual possession at the time of the report or the information. However, if it appears to the Executive Magistrate that any of the party has been forcefully and wrongfully dispossessed within two months next before the date on which the report or information was received by him or after that date and before the date of his order under Sub-Section (1), he may treat the party so dispossessed, as if that party had been in possession and he is empowered to restore the possession to



the party so forcefully and wrongfully dispossessed and pass order forbidding of disturbance of such possession, until eviction therefrom in due course of law.

26. Hence, the inquiry under Section 145 Cr.PC is limited to the question as to who was in the actual possession on the date of the report or information, irrespective of the title to the property and right to possess the same. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of peace by submitting the dispute to the Executive Magistrate for solution as between the parties disputing the question of possession over that property. In this regard, one may also refer to the following judicial precedents:

- (i) **Ashok Kumar Vs. State of Uttrakand**
(2013) 3 SCC 366
- (ii) **Sharad Yadav @ Gappu Vs. State of U.P.**
2013 SCC Online All 4840
- (iii) **Madhu Sharma Vs. Ajit Sharma**
(2013) 2 Gauhati Law Reports 837
- (iv) **Brahmputra Iron & Steel Co. Pvt. Ltd. Vs. Premchand Tolaram Babna Charitable Trust, Assam,** 2012 Cri.L.J. (NOC) 375 (Gau)
- (v) **Shanti Kumar Panda Vs. Shakuntala Devi**
(2004) 1 SCC 438
- (vi) **Ranbir Singh Vs. Dalbir Singh & Ors.**
(2002) 3 SCC 700
- (vii) **Prakash Chand Sachdeva Vs. P.R. & Anr.**
(1994) 1 SCC 471



(viii) **Chandu Naik Vs. Sitaram B. Naik**
(1978) 1 SCC 210

(ix) **R.H. Bhutani Vs. Mani J. Desai**
1968 SCC Online SC 5

(x) **Bhinka Vs. Charan Singh,**
AIR 1959 SC 960

27. It also emerges from the statutory provisions that the condition precedent for initiating proceeding under Section 145 Cr.PC is satisfaction of the Executive Magistrate regarding apprehension of breach of public peace on account of dispute relating to the actual possession of the subject property, as per report or information received by the Executive Magistrate. Such satisfaction must be based on ground mentioned in the preliminary order made under Section 145(1) Cr.PC.

28. It is also pertinent to point out that the concept of public peace and tranquility is much wider concept than instances of tension between few individuals arising out of private disputes between them in regard to landed property. Public order and peace affects public at large. If the effect of any dispute is confined only to few individuals who are parties to the dispute, such dispute could not give any apprehension of breach of public peace and tranquility. Such private civil disputes comes within exclusive jurisdiction of Civil Court. Extraordinary jurisdiction under Chapter X of the Cr. P.C. has



been provided to Executive Magistrates to maintain public peace and tranquility by nipping such breach in the bud.

29. Hence, the Executive Magistrates are expected to invoke their jurisdiction under Section 145 Cr.PC only in cases where there is apprehension of breach of public peace and tranquility. They should refrain from exceeding their jurisdiction and encroaching upon jurisdiction of Civil Courts. Colourable exercise of jurisdiction by Executive Magistrates would be against the object and spirit of Chapter X Cr.PC. and it would render Civil Courts redundant 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. In this regard, one may also refer to the following judicial precedents:

(i) **Md. Ansaruddin Vs. State of Assam**
(2008) Cri.L.J. (NOC) 479 (Gau)

(ii) **Chirstalin Costa Vs. State of Goa**
1993 MHLJ 1409

(iii) **Tarulata Devi Vs. Nikhil Bandhu Mishra**
1982 SCC Online Gau 35

30. The remedy for dispute in regard to title and right to possession lies in the civil law and parties concerned are



required to move Civil Court for the adjudication of their civil rights and interest. They may also get interim order for protecting the subject property by way of injunction or appointment of receiver. Only dispute regarding actual possession of the parties giving rise to apprehension of public peace and tranquility comes under jurisdiction of Executive Magistrate under Chapter X of Cr.PC.

31. It is also pertinent to point out that if a Civil Suit regarding title and possession is pending in regard to the property in question in a Civil Court, a parallel proceeding under Section 145 Cr.PC is not permissible. It would be sheer wastage of public time and money. The Civil Court is also competent to adjudicate the dispute regarding actual possession of the property between the parties and pass interim order during pendency of the Civil Suit. Hence, no purpose would be served by permitting parallel criminal proceeding under Section 145 Cr.PC by Executive Magistrate. It goes without saying that outcome of proceeding under Section 145 Cr.PC is subject to outcome of Civil Suit and the order of Civil Court is binding upon the criminal Courts. Hence, there is no justification for continuation of parallel proceeding under Section 145 Cr.PC, if Civil Suit is already pending in Civil Court in regard to the



landed property in question. In this regard, one may also refer to the following judicial precedents:

- (i) **Kunjbihari Vs. Balram and Anr.**
(2006) 11 SCC 66
- (ii) **Gyandeo Sharma Vs. State of Bihar**
2006 (2) PLJR 181
- (iii) **Ras Bihari Rai & Ors. Vs. The State of Bihar**
(2006 SCC Online Pat 263)
- (iv) **Nand Kishore Prasad Sah Vs. State of Bihar,**
2005 (2) PLJR 506
- (v) **Mahar Jahan vs. State of Delhi**
(2004) 13 SCC 421
- (vi) **Mahant Ram Saran Das Vs. Harish Mohan**
(2001) 10 SCC 758
- (vii) **Amresh Tiwari Vs. Lalta Prasad Dubey**
(2000) 4 SCC 440
- (viii) **Atahaul Haque & Ors. Vs. Md. Allauddin**
(2000) 3 PLJR 90
- (ix) **Chandra Shekhar Singh & Ors. Vs. State of Bihar & Anr.,** (2000 SCC Online Pat 1095)
- (x) **Prakash Chand Sachdeva Vs. State & Anr.**
(1994) 1 SCC 471
- (xi) **Ram Sumer Puri Mahant Vs. State of U.P.**
(1985) 1 SCC 427

32. Now coming to the case on hand, I find that from application of O.P. No.2, Sarojani Devi, proceeding under Section 145 Cr.PC was initiated by learned Executive Magistrate and on the basis of the report of the Circle Officer in



pursuance to the application of Sarojani Devi, the preliminary order dated 28.01.2014 was passed by learned Executive Magistrate under Section 145 Cr.PC.

33. Here it is relevant to mention that in her application, said Sarojani Devi has alleged that the petitioner herein were bent upon to forcefully dispossess her from the landed property in question. However, as per report of the Circle Officer as sought for by the learned Executive Magistrate, the purchasers of the land in question were in possession. However, as per the report, there is dispute among the parties in regard to the title to the property and hence the Circle Officer observed that there is apprehension of breach of peace.

34. Here, it may be pointed out that learned Executive Magistrate had passed the preliminary order in the light of the report of the Circle Officer. But in the report of the Circle Officer, there is no reference to any dispute as to actual possession of the property or any attempt for forceful dispossession. There is also no reference that public at large are affected and involved in the dispute. The dispute is confined only to the parties concerned.

35. As such, as per the facts and circumstances as emerging from the report of the Circle Officer, at most there was



private dispute between the parties in regard to the landed property in question for which the parties were required to move Civil Court. There was no occasion for the Executive Officer to pass the preliminary order under Section 145 Cr.PC. He should have closed the proceeding initiated on the basis of the application of the said Sarojani Devi. Here the learned Executive Magistrate appears to have exceeded his jurisdiction encroaching upon that of the Civil Court, subjecting the parties concerned to unnecessary litigation before himself. He should have advised the parties to move Civil Court. I further find that Sarojani Devi has also filed one Civil Suit in the Civil Court in regard to some part of the landed property in question in regard to right, title and possession. Hence, there is no question of continuation of parallel proceeding under Section 145 Cr.PC.

36. Here it would be necessary to refer to the submission of learned senior counsel for the O.P. No.2 that Civil Suit pending in the Civil Court is only in regard to small part of the land which is subject matter of the proceeding under Section 145 Cr.PC before learned Executive Magistrate. But, it may be pointed out that as per the report of the Circle Office, the proceeding initiated under Section 145 Cr.PC itself is liable to be terminated. Circle Officer has not reported that there was any



dispute regarding actual possession of the property and public at large are interested and involved in the dispute and unless such dispute is not looked into by the Executive Magistrate, breach of peace and tranquility may be breached in the locality. As such, as per the report, it was a private dispute requiring the parties to move Civil Court for adjudication of their rights and title.

37. As such, the preliminary order passed under Section 145(1) Cr.PC is itself not sustainable vitiating the subsequent impugned order passed under Section 146(1) Cr.PC.

38. I further find that the impugned attachment order dated 27.10.2014 has been passed under Section 146(1) Cr.PC, prior to conclusion of the inquiry under Section 145 Cr.PC on the basis of his finding that there is tension between the parties and there is possibility of breach of peace.

39. Here it would be pertinent to point out that prior to conclusion of the inquiry under Section 145 Cr.PC, the Executive Magistrate could attach the property only on the basis of an emergent situation and emergent situation as contemplated under Section 146(1) Cr.PC connotes much more than mere apprehension of breach of peace. Such breach of peace must be appearing to be imminent. Moreover the Executive Magistrate is also required to refer to the material facts and circumstances in



his order showing emergent situation, so that higher court could independently assess the situation and test objectively whether the Executive Magistrate has applied his judicial mind for his satisfaction. But in the impugned order, learned Executive Magistrate has not referred to such material facts and circumstances which may be termed as emergent situation.

40. Hence, in view of the aforesaid facts and circumstances, there was no occasion for the learned Executive Magistrate to continue the proceeding under Section 145 Cr.PC after report of the Circle Officer. He should have dropped it. The parties should have been advised to move Civil Court for adjudication of their rights and title. There was no question for passing order under Section 146(1) Cr.PC attaching the subject property.

41. Accordingly, the present petition is allowed, quashing the proceeding under Sections 145 and 146(1) Cr.PC pending in the Court of learned Executive Magistrate. The impugned order dated 16.05.2016, passed by learned Additional Sessions Judge-III, Nawada in Criminal Revision No. 44 of 2015 / 16 of 2016 and the order dated 27.10.2014 passed by learned Sub-Divisional Magistrate, Rajauli, District-



Nawada in proceeding bearing No. 1M of 2014 are also set
aside.

(Jitendra Kumar, J.)

ravishankar/shoaib

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.02.2025
Transmission Date	06.02.2025

