

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA***Cr. MMO No. 75 of 2025******Reserved on: 08.09.2025******Date of Decision: 13.10.2025***

Bhaji Devi & others**...Petitioners****Versus****Krishan Lal & others****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting? Yes*****For the Petitioner : Mr. Gurmeet Bhardwaj, Advocate.****For the respondents : Mr. Shiv Pal Manhans, Advocate, for
respondents No. 1 to 4 and 6.
None for respondent No.5.**

Rakesh Kainthla, Judge

The petitioners have filed the present petition for quashing of the order dated 20.07.2024, passed by learned Additional Sessions Judge, Sarkaghat, Camp at Joginder Nagar (learned Revisional Court) vide which order passed by learned Sub Divisional Magistrate (SDM), Joginder District Mandi was upheld. *(The parties shall hereinafter be referred to in the same*

manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that the informants filed an application before learned SDM, Jogindernagar, asserting that the informant Krishan Lal and other villagers used to go to their homes through a 2-karam-wide path constructed in Khara No. 166, by Gram Panchayat Dehluhar. Bhajji Devi, Ranveer Kumar and Subham Kumar dug pits in the path to obstruct it. When Krishan Lal requested the respondents, Bhaji Devi, etc, not to dig pits, they quarrelled with him. They also threatened to block the passage. Hence, it was prayed that the respondents be directed not to obstruct the path and fill the pits dug by them.

3. Learned SDM directed the police to carry out the investigation and seek assistance from the Field Revenue Agency. Station House Officer, Jogindernagar, District Mandi, H.P., submitted a report that he found eight pits of one foot in the path, some of which were filled. Statements of villagers were recorded, who claimed that the passage was quite old and was constructed by the Gram Panchayat 10-12 years before the

incident. Bhajji Devi, Ranveer Kumar and Subham Kumar stated that some portion of the road was in their land and they would not allow their land to be used as a path. The path was located at Khasra No.166, and was Gair Mumkin Sadak, as per the report of the revenue agency. It was found after the investigation that Bhajji Devi, Ranveer Kumar and Subham had dug the pits on 14.06.2020. Krishan Lal came to the spot. He called the police. The respondents stopped the work and did not carry out any other activity on the road afterwards. Bhajji Devi had applied for the demarcation of her land. Respondents assured the police not to erect the fence without obtaining the demarcation.

4. Learned SDM directed the issuance of notice under Section 145 of the Cr.P.C. returnable for 16.09.2020. The respondents appeared and filed the reply. The statement of the Secretary, Gram Panchayat Dehluhar, was recorded, and it was held that, as per the revenue record, Khasra number No. 166 was recorded as Gair Mumik Sadak at the time of settlement. A presumption of truth was attached to the entry. The report of the Tehsildar Jogindernagar, District Mandi, showed that the path was 9 to 10 feet wide, which was narrowed to 3 to 4 feet by Kuldeep Chand and Pradeep Chand. The photographs showed

the respondents digging the pit. The respondents, Bhajji Devi and Ranveer Kumar, disputed the existence of the path before the police. Secretary Gram Panchayat stated that the path was constructed by utilising government funds. Thus, learned SDM was satisfied that the road was constructed by the Panchayat by spending public money. Hence, he directed the removal of the obstruction and the opening of the road for the use by the general public.

5. Being aggrieved by the order passed by the learned SDM, the respondents filed the revision, which was decided by the learned Revisional Court. Learned Revisional Court held that the respondents owned and possessed the land, but it was recorded as Gair Mumkin Rasta. The road was cemented with the aid of government funds. The photographs showed the road being damaged. The respondents should have approached the Court for the correction of the entry. The learned Magistrate was to maintain peace and tranquility was not concerned with the revenue entry. There was no infirmity in the order passed by the learned SDM. Hence, the revision was dismissed.

6. Being aggrieved by the judgment and order passed by the learned Courts below, the respondents have filed the present petition asserting that the learned SDM misinterpreted the facts of the case. No adequate opportunity of hearing was provided to the respondents. The attendance of the learned Advocate was wrongly marked on behalf of the revisionist before the learned SDM. He had represented the informants before the Revisional Court. The Tehsildar never visited the spot. The land was owned by the respondents, and mere entry of Gair Mumkin Sadak did not entitle the people to use the respondent's land. Therefore, it was prayed that the present petition be allowed and the judgment and order passed by the learned Courts below be set aside.

7. I have heard Mr Gurmeet Bhardwaj, learned counsel for the petitioners/original respondents and Mr Shiv Pal Manhans, learned counsel for respondents No. 1 to 4 and 6/original informants.

8. Mr Gurmeet Bhardwaj, learned counsel for the petitioners/original respondents, submitted that the original respondents were not properly represented. They never

authorised the learned counsel to appear on their behalf. He represented the informant no. 1 before the Revisional Court. The proceedings conducted by the learned SDM violated natural justice. There was no material before the learned SDM to show that a breach of the peace was likely to occur. Hence, he could not have invoked the provisions of Section 145 of Cr.P.C. Learned SDM had not taken evidence except the statement of the Secretary, which was not sufficient to prove that the path was constructed on the land of the respondents. This aspect was ignored by the learned Revisional Court. Hence, he prayed that the present petition be allowed and judgment and order passed by the learned Courts below be set aside.

9. Mr Shiv Pal Minhans, learned counsel for respondent Nos 1 to 4 and 6, supported the judgment and order passed by the learned Courts below and submitted that no interference is required with it.

10. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

11. The present petition has been filed under Section 528 of BNSS (corresponding to Section 482 of CrPC) against an

order dismissing the revision petition. It was laid down by the Hon'ble Supreme Court in *Krishnan v. Krishnaveni* (1997) 4 SCC 241, that the High Court can intervene under Section 482 of CrPC (corresponding to Section 528 of BNSS) when there is a grave miscarriage of justice or abuse of the process of the Court. It was observed:

“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is a grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and, in an appropriate case, even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of a criminal trial is to render public justice, to punish the criminal and to see that the

trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed, and public justice can be ensured only when the trial is conducted expeditiously.

11. In *Madhu Limaye v. State of Maharashtra* [(1977) 4 SCC 551: 1978 SCC (Cri) 10], a three-judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397(2) of the Code. This Court held that the bar on the power of revision was put to facilitate expedient disposal of the cases, but in Section 482, it is provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction of the said two provisions on this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party. In that case, when allegations of defamatory statements were published in the newspapers against the Law Minister, the State Government decided to prosecute the appellant for an offence under Section 500 IPC. After obtaining the sanction, on a complaint made by the public prosecutor, cognisance of the commission of the offence by the appellant was taken to trial in the Sessions Court. Thereafter, the appellant filed an application to dismiss the complaint on the ground that the court had no jurisdiction to entertain the complaint. The Sessions Judge rejected all the contentions and framed the charges under Section 406. The Order of the Sessions Judge was challenged in revision in the High Court. On a preliminary objection raised on maintainability, this Court held that the power of the High Court to entertain the revision was not taken away under Section 397 or inherent power under Section 482 of the Code.

12. In *V.C. Shukla v. State through CBI* [1980 Supp SCC 92: 1980 SCC (Cri) 695: (1980) 2 SCR 380] (SCR at p. 393) a four-judge Bench per majority had held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Sessions Court under Section 397(1) of the Code. In the *Rajan Kumar Machananda case* [1990 Supp SCC 132: 1990 SCC (Cri) 537], the case related to the release of a truck from attachment, obviously on the filing of an interlocutory application. It was contended that there was a prohibition on the revision by operation of Section 397(2) of the Code. In that context, it was held that it was not revisable under Section 482 in the exercise of inherent powers by operation of sub-section (3) of Section 397. On the facts in that case, it was held that by provisions contained in Section 397(3), the revision is not maintainable. In the *Dharampal case* [(1993) 1 SCC 435: 1993 SCC (Cri) 333], which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section 482 was prohibited. On the facts, in that case, it could be said that the learned Judges would be justified in holding that it was not revisable since it was a prohibitory interim order of attachment covered under Section 397(2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in *Madhu Limaye case* [(1977) 4 SCC 551: 1978 SCC (Cri) 10] as upheld in *V.C. Shukla case* [1980 Supp SCC 92: 1980 SCC (Cri) 695 : (1980) 2 SCR 380] and also in view of our observations stated earlier. The ratio in the *Deepti case* [(1995) 5 SCC 751: 1995 SCC (Cri) 1020] is also not apposite to the facts in the present case. To the contrary, in that case, an application for discharge of the accused was filed in the Court of the Magistrate for an offence under Section 498-A IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong

concession made by the counsel appearing for the State that the record did not contain allegations constituting the offence under Section 498-A, the High Court, without applying its mind, had discharged the accused. On appeal, this Court, after going through the record, noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498-A IPC. The High Court, since it failed to apply its mind, had committed an error of law in discharging the accused, leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertain the application under Section 482 of the Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court had set aside the order of the High Court and confirmed that of the Magistrate.

13. The ratio of the *Simrikhia case [(1990) 2 SCC 437: 1990 SCC (Cri) 327]* has no application to the facts in this case. Therein, on a private complaint filed under Sections 452 and 323 IPC, the Judicial Magistrate, First Class, had taken cognisance of the offence. He transferred the case for inquiry under Section 202 of the Code to the Second-Class Magistrate, who, after examining the witnesses, issued a process to the accused. The High Court, exercising the power under Section 482, dismissed the revision. But subsequently, on an application filed under Section 482 of the Code, the High Court corrected it. The question was whether the High Court was right in reviewing its order. In that factual backdrop, this Court held that the High Court could not exercise inherent power for the second time. The ratio therein, as stated above, has no application to the facts in this case.

14. In view of the above discussion, we hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of

continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for a decision on the merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397(1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal.”

12. This position was reiterated in *Rajinder Prasad v. Bashir*, (2001) 8 SCC 522, wherein it was held:

“...though the power of the High Court under Section 482 of the Code is very wide, the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been a failure of justice or misuse of judicial mechanism or procedure, a sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, “Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code.”

13. A similar view was taken in *Kailash Verma v. Punjab State Civil Supplies Corporation*, (2005) 2 SCC 571, and it was held:

“5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* [(1999) 6 SCC 326: 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code, as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is a serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of the law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

14. This position was reiterated in *Shakuntala Devi v. Chamru Mahto*, (2009) 3 SCC 310: (2009) 2 SCC (Cri) 8: 2009 SCC OnLine SC 292, wherein it was observed: -

“24. It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases, the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482 was not subject to the prohibition under sub-section (3) of Section 397 of the Code and was capable of being invoked in appropriate

cases. Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code, debarring the High Court from entertaining an application under Section 482 thereof, does not, therefore, commend itself to us.

25. On the factual aspect, the Magistrate came to a finding that the appellants were entitled to possession of the disputed plot. It is true that while making such a declaration under Section 145(4) of the Code, the Magistrate could have also directed that the appellants be put in possession of the same.

26. The question which is now required to be considered is whether the High Court was right in quashing the order passed by the Magistrate, which was confirmed by the Sessions Judge, on the ground that the application made by the appellants under Section 145(6) of the Code was barred firstly by limitation under Article 137 of the Limitation Act and also by virtue of Section 6 of the Specific Relief Act, 1963.

15. Delhi High Court also took a similar view in *Surender Kumar Jain v. State*, *ILR (2012) 3 Del 99* and held: —

“5. The issue regarding the filing of a petition before the High Court after having availed the first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid the statutory bar of the second revision petition, the courts have held that the High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But that power was to be exercised sparingly and with great caution, particularly when the person approaching the High Court has already availed a remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved by the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the

subject matter of the revision before the Sessions Court. It all depends not only on the facts and circumstances of each case but also on whether the impugned order brought about a situation that is an abuse of the process of the court, there was a serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in *Madhu Limave v. State of Maharashtra* (1977) 4 SCC 551, *State of Orissa v. Ram Chander Aggarwal*, (1979) 2 SCC 305: AIR 1979 SC 87, *Rai Kapoor v. State (Delhi Administration)* 1980 Cri LJ 202, *Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation* (2005) 2 SCC 571.”

16. It is apparent from the judgments that the High Court has a limited jurisdiction and it can rectify a serious miscarriage of justice or non-compliance with a mandatory provision of law while exercising its jurisdiction under Section 528 of BNS (482 of the Cr. P.C).

17 The informants filed a petition before the learned SDM, who issued a notice under Section 145 of Cr.P.C., which reads as under: -

“145. A procedure where disputes concerning land or water are likely to cause breach of the 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.

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(4) The Magistrate shall then, without reference to 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 and which of the parties was, at the date of the order made by him under subsection (1), in possession of the subject of dispute:

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18. Section 145 (1) of Cr.P.C. empowers a Magistrate to take an action on being satisfied that a dispute concerning land or way is likely to cause a breach of the peace. It was laid down by a constitutional bench of the Hon'ble Supreme Court in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*, (2020) 1 SCC 1: 2019 SCC OnLine SC 1440 that the jurisdiction under Section 145(1) of CrPC can be invoked if the Magistrate is satisfied that a dispute is likely to result in a breach of peace. It was observed at page 342: -

“295. Section 145 is recognised to be a branch of the preventive jurisdiction of the Magistrate. [Commentary on the Criminal Procedure Code by Ratanlal and Dhirajlal, 20th Edn. (2016) at p. 426.] Section 145(1) can be invoked

on the satisfaction of the Magistrate that “a dispute likely to cause a breach of the peace exists...”. The provision relates to disputes regarding possession of land or water or its boundaries, which may result in breach of the peace. The function of the Magistrate is not to go into questions of title, but to meet the urgency of the situation by maintaining the party in possession. The Magistrate is empowered to call upon the parties to put in written statements in support of their claim to “actual possession”. Such an order is to be served as a summons upon the parties. The Magistrate is to peruse the statements, hear the parties and weigh the evidence, in order to ascertain who was in possession at the date of the order. The Magistrate may make that determination “if possible” to do so. Moreover, the determination is about the factum of possession on the date of the order “without reference to the merits of the claim of any of such parties to a *right* to possess the subject of the dispute”. These words indicate that the Magistrate does not decide or adjudicate upon the contesting rights to possess or the merits of conflicting claims. The Magistrate is concerned with determining only who was in possession on the date of the order. If possession has been wrongfully taken within two months of the order, the person so dispossessed is to be taken as the person in possession. In cases of emergency, the Magistrate can attach the subject of the dispute, pending decision. The action ultimately contemplated under Section 145 is not punitive, but preventive, and for that purpose is provisional only till a final or formal adjudication of rights is done by a competent court in the due course of law. Thus, nothing affecting the past, present and future rights of parties is contemplated under the provision.

296. The object of the provision is merely to maintain law and order and to prevent a breach of the peace by maintaining one or other of the parties in possession, which the Magistrate finds they had immediately before the dispute, until the actual right of one of the parties has been determined by a civil court. The object is to take the

subject of dispute out of the hands of the disputants, allowing the custodian to protect the right until one of the parties has established their right (if any) to possession in a civil court. [*Commentary on the Criminal Procedure Code* by Ratanlal and Dhirajlal, 20th Edn. (2016) at p. 427.] This is evident from the provisions of sub-section (6) of Section 146. The Magistrate declares the party which is entitled to possession “until evicted therefrom in due course of law”. While proceeding under the first proviso, the Magistrate may restore possession to a party which has been wrongfully and forcibly dispossessed. No party can be allowed to use the provisions of Section 145 for ulterior purposes or as a substitute for civil remedies. The jurisdiction and power of the civil court cannot in any manner be hampered. [*Commentary on the Criminal Procedure Code* by Ratanlal and Dhirajlal, 20th Edn. (2016) at p. 451.]

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297.2. In *R.H. Bhutani v. Mani J. Desai*, (1969) 1 SCR 80: AIR 1968 SC 1444: 1969 Cri LJ 13, the appellant entered into a leave and licence agreement with the first respondent to occupy a cabin owned by her. When a dispute over an increase in compensation arose between the parties, the first respondent sought to evict the appellant and also hand over the possession of the cabin to the second and third respondents. Thereafter, the appellant filed an application under Section 145, and the Magistrate commenced the proceedings. While the proceedings were pending, the respondent filed a civil suit. The Magistrate concluded that the appellant was in actual possession of the cabin and had been forcibly dispossessed. In the revision petition before the High Court, the Magistrate's order was set aside, and it was held that the Magistrate had breached the scope of his powers under Section 145. The order of the High Court was assailed before this Court, which set aside the order of the High Court and restored the order of the Magistrate. J.M. Shelat, J. speaking for a three-Judge Bench of this Court, discussed

the scope of proceedings under Section 145 in the following terms : (AIR pp. 1447-48, para 8)

“8. The object of Section 145, no doubt, is to prevent breach of the peace and, for that end, to provide a speedy remedy by bringing the parties before the court and ascertaining which of them was in actual possession and to maintain the status quo until their rights are determined by a competent court. ... The enquiry under Section 145 is limited to the question as to who was in actual possession on the date of the preliminary order, irrespective of the rights of the parties.” (emphasis supplied)

19. Learned SDM has not been specified in the order that the dispute was likely to result in a breach of the peace. The report submitted by the police specifically stated that the path was open, there was no fencing, and no work was done after 14.06.2020. This report clearly showed that there was no apprehension of the breach of the peace. The learned SDM initiated proceedings on 25.09.2020 months after the incident. It was laid down by the Madras High Court in *Peria Mannadha Goundar v. Marappa Goundar*, 1968 SCC OnLine Mad 69: AIR 1969 Mad 411: (1969) 1 Mad LJ 37: 1969 Cri LJ 1410 that initiation of proceedings months after the incident is bad. It was observed at page 414:

“14. In Anandilal v. Sukhchand, AIR 1930 Cal 715, a Division Bench held that it was necessary for making an order under Section 145 that the Magistrate should be satisfied

at the time of drawing up the proceedings that there is then existing a likelihood of breach of the peace arising from the disputes between the parties with regard to the land in question. The making of an order, therefore, some months after the report on which it was purported to be passed, cannot be supported. In that case, the report by the police in respect of the breach of the peace was made on 18-1-1926. The preliminary order was passed in July 1926, about six months later. I respectfully agree with the view expressed by the Division Bench.”

20. Therefore, the learned SDM had no jurisdiction to initiate the proceedings under Section 145 of the CrPC.

21. Section 145 (4) of CrPC provides that the Magistrate is required to take evidence during the inquiry. Learned SDM recorded the statement of Mangat Ram, Secretary Gram Panchayat, Delhu on 22.02.2021, but there is nothing to show that the opportunity of cross-examining the witness was afforded to the respondents. Since Section 145 (4) provides that the evidence is to be taken in a summons case, therefore legislature contemplated that the evidence has to be taken in the presence of the respondents, who will have a right to cross-examine the witnesses. It was laid down in *L. Thansak VS Khupkhojang Kuki and Others* 1983 2 GauLR 116; 1983 Supreme (Gau) 75 that the magistrate cannot rely upon the evidence not tested by cross-examination. It was observed:

“9. The objects behind successive amendments to section 145 Cr. P.C. are known. When the Code was amended in 1955, important changes were made with the object of curtailing the proceedings. Before 1955, the parties were only required to put in written statements of their claims as respects the fact of actual possession of the subject of dispute, and it was for the Magistrate to record at the inquiry all such evidence, oral and documentary, as may be produced by the parties. After the amendment of 1955, the parties were required to put in such documents or to adduce by putting in affidavits the evidence of such persons as they relied upon in support of their claims and the Magistrate was normally expected to complete the inquiry and reach a conclusion on the basis of these documents and affidavits. The first proviso to subsection (4) gave him the discretion to summon and examine any person whose affidavits had been put in by a party. The Law Commission on this point observed :

"The revised procedure does not appear to have worked satisfactorily in practice. It is said that stereotyped affidavits prepared by lawyers on the same lines as the written statements are put in by both sides, and these do not help the Magistrate very much in reaching a sound decision. Examination of witnesses under the first proviso cannot, in most cases, be avoided, and consequently, there is no saving of the Court's time. The main object of the amendment, which is to get the inquiry completed rapidly, has not been achieved. In principle also it is also bitter that the Magistrate is required to decide the important fact of possession on the basis of oral evidence given before him and tested by cross-examination in the presence of the parties. We, therefore, recommend that the procedure as it existed before 1955 should be restored".

10. The above observation of the Law Commission emphasised the recording of oral evidence given before the Magistrate and tested by cross-examination in the

presence of the parties. Cross-examination is a very efficacious weapon in the present adversary system. In view of the facts that in the instant case the evidence of the witnesses was not recorded and consequently was not tested by cross-examination, the learned Magistrate's finding as to possession on the basis of such unrecorded evidence cannot be said to be in accordance with law.”

22. In the present case, learned SDM had relied upon the report of the police, the statement recorded by the police and the report of the Tehsildar. Therefore, there was a violation of mandatory provisions of law.

23. Learned SDM adjudicated the dispute as if it were a civil Court, which was beyond the jurisdiction conferred upon him under Section 145 of Cr.P.C.

24. Learned Revisional Court did not advert to these provisions; it noticed the provisions of Section 145 of Cr.P.C. but failed to appreciate that the provisions can be invoked only when there is apprehension of breach of peace and an emergent action is required. Therefore, the judgment dated 20.07.2024 passed by the learned Revisional Court and the order passed by the learned SDM on 24.02.2021 cannot be sustained.

25. Consequently, the present petition is allowed, and the judgment dated 20.07.2024, passed by the learned

Revisional Court and the order dated 24.02.2021 passed by the learned SDM are set aside.

26. A copy of the judgment, along with records of the learned Trial Court, be sent back forthwith.

27. The records of the learned Courts below be returned with a copy of this judgment for the information

13th October 2025
(ravinder)

(Rakesh Kainthla)
Judge