

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4285/2019

1. Shyokaran S/o Harlal, Age 35 Years
2. Ramchandra S/o Harlal, Age 28 Years
3. Harlal S/o Rakhba, Age 70 Years

All R/o Gopipura, Thana Dudu, District Jaipur, Raj.

-----Petitioners

Versus

1. Mangla S/o Rakhba, Aged About 75 Years, R/o Gopipura, Thana Dudu, District Jaipur.
 2. Harbaks S/o Nathu
 3. Gangaram S/o Nathu
 4. Akheram S/o Nathu
 5. Parasram S/o Chhitar
 6. Moti S/o Chhitar
 7. Heera S/o Chhitar
 8. Ramkaran S/o Chhitar
- All R/o Gopipura, Police Station Dudu, District Jaipur
9. Sub Divisional Magistrate, Dudu, District Jaipur
 10. Tehsildar Dudu, District Jaipur.

-----Respondents

For Petitioner(s) : Mr. J.R. Chaudhary

For Respondent(s) : Mr. Yunus Khan

JUSTICE ANOOP KUMAR DHAND

Order

20/04/2026

1. By way of filing the instant petition, a challenge has been led to the impugned judgment dated 26.07.2017 passed by the Court of Sub-Divisional Magistrate, Dudu, District Jaipur in Complaint Case No. 01/2017, by which the complaint submitted under Section 145 Cr.P.C. by the respondent was accepted & directions were issued to attach the subject land and the Tehsildar, Dudu

who was appointed as Receiver on the subject land and directed him to auction the crops and deposit the amount so received by him.

2. Aggrieved by the aforesaid a revision petition was submitted by the petitioners before the Court of the Additional Sessions Judge Dudu, District Jaipur. However, the same was rejected vide order dated 03.06.2019.

3. Learned counsel submits that while passing the impugned order dated 26.07.2017, no inquiry was conducted by the Sub-Divisional Magistrate and the said order has not been passed, as per the provisions contained under Section 145 Cr.P.C. rather the same has been passed as if an application under Section 146 Cr.P.C. was being decided by the learned Sub-Divisional Magistrate. He further submits that the subject land cannot be kept with the Receiver for an indefinite period and the final orders are required to be passed, strictly in accordance with the provisions contained under Section 145(4) Cr.P.C. Hence, under these circumstances interference of this Court is warranted.

4. *Per contra* learned counsel appearing on behalf of the respondents opposes the arguments raised by counsel for the petitioners and submits that the petitioners appeared before the Court of the learned Sub Divisional Magistrate, Dudu through their counsel who failed to produce any evidence in their defence and submitted that instead of leading evidence in defence, he would rather argue the matter finally. Hence, hearing the arguments of both the sides, the order impugned has been passed which does not suffer from any illegality. He further submits that the order passed by the learned Sub Divisional Magistrate, Dudu has been

upheld by the Revisional Court by passing a reasoned & speaking order dated 03.06.2019. Hence, under these circumstances interference of this Court is not warranted. In support of his contentions he places reliance upon the judgment passed by the Allahabad High Court in the case of **Ram Shanker Tewari & Anr. Vs. The State & Ors.** reported in **1970 CriLJ 770**.

5. Heard and considered the submissions made at the Bar and perused the material available on record.

6. Perusal of the record indicates that a complaint under Section 145 Cr.P.C. was submitted with regard to the subject land before the Court of the Sub Divisional Magistrate Dudu, District Jaipur on the basis of the report furnished by the SHO, Police Station Dudu, District Jaipur. It appears that notices were issued to the respective parties and thereafter , few parties appeared and some chosen not to appear, hence, ex-parte proceedings were initiated against those who failed to appear before the learned Sub-Divisional Magistrate. It appears that the petitioners were represented through their counsel who refused to produce any evidence and wanted to argue the matter finally and on the basis of the arguments made by the rival sides, the order impugned has been passed and a direction has been issued to keep the subject property with the Receiver, appointed by the Court below i.e., Tehsildar, Dudu and he has been directed to auction the crops and deposit the amount, so received from the auction.

7. It is quite surprising on the part of the learned Sub-Divisional Magistrate to pass the above order without following the provisions and the procedure contained under Section 145 Cr.P.C. which reads as under:-

“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 to the merits or the claims of any of the parties to a right to possess the subject of dispute, pursue 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 his 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 subsection (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 powers of the Magistrate to proceed under section 107."

8. Perusal of the mandatory provisions, contained under Section 145(4) Cr.P.C. indicates that the Magistrate shall without reference to the merits or the claims of either side with regard to right to possess the subject property, hear both the sides and receive all such evidence which have already been produced before him and final orders would be passed for handing over the possession of the subject land.

9. In the instant case, the aforesaid procedure has not been followed by the learned Sub-Divisional Magistrate, the learned Sub-Divisional Magistrate has closed the file as if any application under Section 146 Cr.P.C. was pending before him and he was deciding the same. The provisions contained under Section 146 Cr.P.C. pertains to attachment of subject property & to make such arrangements was to protect the subject land, till disposal of the proceedings pending under Section 145 Cr.P.C. The provisions contained under Section 146 Cr.P.C. are required to be exercised by the learned Sub-Divisional Magistrate to protect the subject property, by appointing a Receiver, taking the subject property under attachment and keeping the same with the Receiver so appointed by the learned Sub-Divisional Magistrate but such property cannot be allowed to remain under attachment with the Receiver for an indefinite period and final orders are required to be passed by the Sub-Divisional Magistrate, strictly as per the provisions contained under Section 145 Cr.P.C.

10. In the instant case, the order impugned has not been passed, as per the mandate contained under Section 145 Cr.P.C., hence, on this count alone the order impugned, passed by the learned Sub-Divisional Magistrate, is not sustained in the eyes of

law and the same is required to be partly quashed and set aside while issuing a direction to the learned Sub-Divisional Magistrate to pass a fresh order, after conducting an inquiry, if any, required or if any evidence is to be led by both the sides and thereafter only on the basis of the same, he should pass the final order under Section 145(4) Cr.P.C. providing due opportunity of hearing to both the sides. However, it is made clear that till passing of the final orders under Section 145(4) Cr.P.C by the learned Sub-Divisional Magistrate, the subject land would remain with the Receiver i.e., Tehsildar, Dudu.

11. It is expected from the learned Sub-Divisional Magistrate to decide the pending complaint expeditiously, as early as possible, preferably within a period of six months from the date of receipt of the certified copy of this order.

(ANOOP KUMAR DHAND),J