

Neutral Citation No. - 2025:AHC-LKO:22154
AFR

Court No. - 11

Case :- CRIMINAL MISC. WRIT PETITION No. - 28135 of 2018

Petitioner :- Mohd. Kasim Usmani And Ors.

Respondent :- State Of U.P. And Ors.

Counsel for Petitioner :- Rajeiu Kumar Tripathi, Diwakar Singh Gautam, Rajeiu Kumar Tripathi

Counsel for Respondent :- Govt. Advocate, Akhilesh Pratap Singh, Anurag Tiwari, Ashok Kumar Verma, Avadhesh Kumar Shukla, Gayasuddeen, Hari Bux Singh, Mahmood Alam, Mayank Dwivedi, Mohd. Shahanshah Newaz Khan

Hon'ble Rajnish Kumar, J.

1. Heard, Shri Rajeiu Kumar Tripathi, learned counsel for the petitioners, Shri S.P. Tiwari, learned AGA for the State and Shri Mahmood Alam, learned counsel for the respondent no. 4.
2. This petition under Article 227 of the Constitution of India has been filed assailing the judgment and order dated 29.08.2018, passed in Criminal Revision No.141 of 2017 (Mohd. Kasim Usmani and Others Vs. State of U.P. and Others) by Third Additional Sessions Judge, Bahraich and the order dated 24.06.2017 passed in Case No.23 of 2015, under Section 145 of the Code of Criminal Procedure (here-in-after referred as Cr.P.C.) by the City Magistrate, Bahraich and to quash the proceedings of the said case.
3. Learned counsel for the petitioners submitted that the petitioners are the owner and in possession of the property in dispute since the time of their ancestors. Earlier, the names of predecessors of the petitioners were recorded in the records and now the petitioners' names are recorded. He further submitted that the proceedings under Section 145 Cr.P.C. are not maintainable as the

dispute of title is also pending before the civil court in one of the suits filed by the respondent no.4 for declaration as well as cancellation of the sale deed. Another suit filed by the petitioners for injunction is also pending before the civil court. It was only after coming to know about the institution of the suit for permanent injunction filed by the predecessor-in-interest of the petitioners, application under Section 145 Cr.P.C. was filed before the Magistrate, which is apparent from the fact that the specific plea of knowledge of the suit taken in paragraph-21 of the petition has not been specifically denied and only a vague reply has been given in paragraph-33 of the counter affidavit. He further submitted that the respondent no.4 admitted the possession of the predecessor-in-interest of the petitioners in the application itself, therefore, the application was not maintainable. He further submitted that the impugned order dated 24.06.2017 could not have been passed by the learned Magistrate because there was no report of emergent need for passing the order on account of breach of public peace and tranquility. The impugned order dated 24.06.2017 was passed on a report dated 30.06.2015, whereas not even a single incident was reported after that and it also does not disclose of any emergent need. No any further report was also sought in this regard.

4. He further submitted that the petitioners had placed ample evidence on the record of the court below to show that the petitioners have been in possession for a long time and are also paying the taxes etc. The sale deed dated 25.09.1937 of a neighbour was also placed on record, in which in the boundaries, the house of the petitioners has been shown in the south with the name of grand father of the petitioners. He further submitted that learned revisional court also without considering the aforesaid and grounds raised in the revision, dismissed the revision. He further submitted that no interim injunction has been granted by the civil court in either of the suits

and if there was any urgency, the application could have been moved in the suits filed before the civil court. He further submitted that the possession can not be taken away from the petitioners in such an illegal manner. Thus, the submission is that the impugned orders are not sustainable in the eyes of law and liable to be set-aside. He relied on **Amresh Tiwari Vs. Lalta Prasad Dubey and Another; (2000) 4 SCC 440, Mahant Ram Saran Dass Vs. Harish Mohan and Another; (2001) 10 SCC 758 & Ashok Kumar Vs. State of Utterakhand and Others; (2013) 3 SCC 366.**

5. Per contra, learned counsel for the respondent no.4 submitted that the application under Section 145 Cr.P.C. was filed by the respondent no.4 as there was apprehension of breach of public peace and tranquility. He further submitted that admittedly, the predecessor-in-interest of the respondent no.4 is the owner of the property-in-dispute. However on account of certain circumstances, the predecessor-in-interest of the petitioners were asked to get the map sanctioned. Since the predecessor-in-interest of the respondent no.4 was out and residing in Delhi in connection with employment for livelihood, where the respondent no.4 was also living with his father, therefore the possession was with the predecessor-in-interest of the petitioners. After death of his father, the petitioners could not come for a long time and when he came back then he came to know that the property has changed a lot and the name of the predecessor-in-interest of the petitioners has been got recorded, therefore, an F.I.R. was lodged on 08.06.2013, the proceedings of which are pending. He further submitted that prior to filing of the suit by the parties, the application was moved on account of emergent need and it is wrong to say that the application was filed only after coming to know about the institution of suit by the petitioners. Even otherwise, it is apparent from the written statement filed by the respondent no.4 in the suit filed by the petitioner as the same was filed after coming

to know about the suit on 16.04.2015, whereas the application under Section 145 Cr.P.C. was filed on 30.01.2015.

6. He further submitted that no proof of title has been filed by the petitioners even before this Court and no rejoinder affidavit to the counter affidavit filed by the respondent no.4 has also been filed even after passing of a long time, therefore, the facts disclosed in the counter affidavit are unrebutted. He further submitted that the impugned orders have rightly been passed in accordance with law and there is no illegality or infirmity in the same. The judgment relied by the learned counsel for the petitioners are not applicable on the facts and circumstances of the present case and the petitioners are not entitled for any benefit of the same. The petition has been filed on misconceived and baseless grounds, which is liable to be dismissed.

7. Learned A.G.A. could not dispute the factual aspects of the matter as argued by learned counsels for the parties and the legal position under which an order under Section 145 Cr.P.C can be filed on account of emergency on account of threat of breach of public peace and tranquility. However he submitted that the impugned orders have been passed in accordance with law and there is no illegality or infirmity in them. Thus, the petition is misconceived and liable to be dismissed.

8. I have considered the submissions of learned counsel for the parties and perused the records.

9. An application under Section 145 Cr.P.C. was moved by the respondent no.4 against the predecessor-in-interest of the petitioners on 30.01.2015. A report was called from the in-charge Inspector, Kotwali Nagar. In response thereof the report dated 30.06.2015 and 02.07.2015 were submitted stating therein that there was tension between the parties regarding possession and that a serious incident

could occur at any time, therefore, the further legal action was required in the matter. Having been satisfied with the report of S.H.O. that there was tension between the parties due to possession on the property in dispute, a preliminary order was passed on 20.08.2015 by the City Magistrate, Bahraich i.e. the respondent no.2 and a notice was issued to appear and file objection and relevant documents. In response thereof, the applicant i.e. the respondent no.4 appeared and filed his documents relating to the property in dispute and an application under Section 146 (1) Cr.P.C. However, the respondents i.e. the petitioners did not appear. Thereafter the learned Magistrate passed an ex-parte order of attachment under Section 146 (1) Cr.P.C. on 17.10.2016. Being aggrieved by the same, the petitioners filed a Revision No.194 of 2016, which was allowed by the Revisional Court by means of the order dated 24.12.2016 and the matter was remanded to pass a fresh order on merit after affording an opportunity of hearing to both the parties and to adduce evidence.

10. In compliance of the aforesaid order passed by the Revisional Court the respondent no.4 appeared before the learned Magistrate but the petitioners did not appear. The learned Magistrate passed a fresh order on 24.06.2017, recording a finding that since the petitioners have not appeared, therefore, there is no effect on the circumstances under which the order dated 17.10.2016 was passed and after considering the documents filed by the petitioners alongwith their application for restoration filed on 30.11.2016, the learned Magistrate passed a fresh order under Section 146 (1) Cr.P.C. for attachment and closed the proceedings recording a finding, on perusal of the documents placed on record, that it is apparent that there is a dispute of title between the parties. It has also been recorded that it is also apparent from the Police report that there is serious dispute between the parties with regard to possession of the

house in question and there is serious possibility of breach of peace on the spot.

11. The order dated 24.06.2017 was challenged by the petitioners in Revision No.141 of 2017 before the Session Judge, which was dismissed by means of the judgment and order dated 29.08.2018, by the IIIrd Additional Session Judge, Bahraich. The revision was decided ex-parte, as the petitioners had not appeared, with the assistance of assistant District Government Counsel and counsel for the respondent no.4 and after perusing the records. The learned Revisional Court, considering the plea taken before the Revisional Court that on account of start of election procedure the petitioners could not know about the proceedings of the case before the learned Magistrate, therefore, they could not place their case and objections, recorded a finding that the matter was remanded by the Revisional Court by means of the order dated 24.12.2016, whereas the nominations for Elections were made on 01.02.2016 and the Election Symbols were allotted on 12.02.2016 and the impugned order by the learned Magistrate was passed after completion of Election process on 24.06.2017, therefore, the plea is not tenable and it appears that they had deliberately not appeared for some undue benefit. It has also been recorded that on account of it, they have again not appeared in the last many dates before the Revisional Court also. Thus, no illegality appears in the lower court's order dated 24.06.2017 and there is no need of interference in the matter. Thus, it is apparent that the Revisional court passed the order merely on the ground of the petitioners' absence before the Revisional Court as well as learned Magistrate during the proceedings and on presumption without considering as to whether the application under Section 145 Cr.P.C. was maintainable or not and if maintainable as to whether the order could have been passed in the facts and circumstances of the case and on the basis of Police Report.

12. An authority or Court can pass an order only in accordance with law and after considering the pleadings and material on record even if a party does not appear for any reason.

13. The section 145 Cr.P.C., relevant for consideration of the case in hand, is extracted here-in-below:-

"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."

14. Section 146 Cr.P.C. provides the power to attach the subject of dispute and to appoint a receiver, which is extracted here-in-below:-

"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 (5 of 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."

15. In view of above, on being satisfied by a police officer's report or upon other information that a dispute is likely to cause a breach of peace exists concerning any land or water or the boundaries thereof within his jurisdiction, an Executive Magistrate shall make an order recording the grounds of satisfaction and requiring the parties concerned in such dispute to appear and file their respective claims regarding the actual possession of disputed subject. Thereafter, proceeding in the manner provided under Section 145, after passing the order under sub-section (1), if the Magistrate finds the case to be one of emergency or if he decides that some of the parties came in such possession or he is unable to satisfy as to who was in such possession of the subject or dispute, he may attach the subject of dispute until a competent court determines the rights of the parties therein with regard to the person entitled thereon. However, the

attachment may be withdrawn at any time if the learned Magistrate is satisfied that there is no longer likelihood of breach of peace subject to dispute. Thus, in case after passing an order under Section 145 (1) Cr.P.C. from a report of police officer or any other information that there is a dispute in regard to any land or water or boundaries thereof, an Executive Magistrate may pass an order under Section 145 (1) and if during the proceedings thereof, he considers that there is an emergency in the case or none of the parties was in possession or if he is unable to satisfy himself as to who was in possession, he may pass an order of attachment of the property in dispute until a competent court determines the rights of the parties with regard to the possession.

16. Adverting to the facts of the present case, respondent no.4 filed an application under Section 145 Cr.P.C. on 30.01.2015, stating therein that the grand father, late Mohd. Bux was the owner and in possession of the disputed property and after his death, the respondent no.4 inherited it. His grand father got the map sanctioned in the year 1939 for boundaries and thereafter again in the year 1964 and got the boundaries constructed. After his death, the father of the respondent no.4 got the map sanctioned for a room and latrine but due to financial constraints, he had to go out for livelihood and gave some money to Mohd. Naseem Usmani residing near the house for approval of map and also told that in case the money would be short, he may incur further which he would give to him but Mohd. Naseem Usmani and his sons colluded and got a forged map sanctioned in the name of Mohd. Naseem Usmani and informed to the father of the applicant that the map has been sanctioned. The applicant i.e. the respondent no.4's father got the room and latrine constructed. He asked to the respondents i.e. the petitioners for the map but they said that it is missing. His father had not given any attention to it. The applicant was also residing with his father in Delhi. The father of the

applicant had full faith on Mohd. Naseem Usmani, therefore, the house and plot was left with him. The father of the applicant died in the year 1992. The applicant thereafter could not come about 18-20 years. Thereafter, when he came back there was a lot of changes in the property and there is a wall on some part and constructions on the other. Some of the portion is also on rent. The applicant gave an application in Nagar Palika Parishad for a copy of the map and for registering the house in his name, then he came to know that the respondents had got their names also recorded in the Nagar Palika Parishad. The house number was changed from 313 to 497. In regard to the aforesaid, fraud and cheating by the respondent, the applicant lodged an F.I.R. on 08.06.2013, in which the respondents have been bailed out. It was also submitted that the respondents i.e. the petitioners are trying to sell the property and other things without permission. Accordingly, he prayed for proceedings under Section 145 Cr.P.C. and for attachment to save the property.

17. The aforesaid averments made by respondent no.4 indicates that he has admitted the possession of the petitioners and the predecessor-in-interest of the petitioners. The report was called by the learned Magistrate on the aforesaid application from the in-charge Inspector, Kotwali Nagar by means of the order dated 22.04.2015. In response thereof, the report was submitted by the Police Station- Kotwali Nagar, District- Bahraich disclosing therein the boundaries of the property-in-dispute and stating that in half of the portion of the property in dispute, there is a furniture shop by a firm of Mohd. Haneef and on some portion there is lock and it has been informed by the people residing in the vicinity that Mohd. Usmani is residing in the same, who is presently residing in Lucknow in regard to which F.I.R. has been lodged by Mohd. Nasir son of Naseerullah against the respondents. The report was submitted on 30.06.2015. It has also been stated in the report that both the

parties have filed the suites in regard to the property in dispute bearing Case No.63 of 2014; Mohd. Usmani and Others Vs. Nafees in the court of civil judge (Jr. Division) Bahraich and Regular Suit No.45 of 2015; Mohd. Nafees Vs. Usmani in the court of Civil Judge (Jr. Division) Bahraich. Thereafter, it has been stated that there is tension between the parties with regard to possession on the property in dispute, therefore, there is a need of legal action with regard to the property in dispute during pendency. Thus, it is apparent that the possession of the petitioners has been admitted in the report also and it has also been admitted that the petitioners were not on the spot at the time of the inspection and the report was only for tension (Kasheedgi) between the parties with regard to possession on the property in question but there is no report of any emergency for passing an order for attachment in the matter. The fact of filing of the suit by both the parties were also disclosed in the report.

18. On the basis of aforesaid report, the order dated 20.08.2015 was passed by the learned Magistrate requiring the parties to appear and file their written statement with their claims of actual possession of the property in dispute. In response thereof the respondent no.4 appeared through his counsel and filed an application under Section 146 (1) Cr.P.C. stating therein that the other parties i.e. the petitioners used to make tussle for possession on the land in dispute and there is a possibility of breach of peace, therefore, there is a need of attachment of disputed property. It appears that no document with regard to the ownership or possession were filed alongwith the application either under Section 145 Cr.P.C. or under Section 146 (1) Cr.P.C. Thus, merely on the basis of the police report, the order dated 17.10.2016 was passed under Section 146 (1) Cr.P.C., which is also apparent from the perusal of the order, which is annexed as annexure no.21 of the petition. In pursuance of the said order a report was

submitted by the Police Station- Kotwali Nagar, Bahraich that there is a hardware shop of Mohd. Haneef in some part of the property in dispute, who has told that he has got the sale deed of the same from the respondent Mohd. Usmani and in some part Anas son of Haji Zaheer Ahmad is residing on rent, therefore, the house could not be vacated and attached. A request was also made to appoint some competent magistrate for execution of the order after getting it vacated. Thus, from this report also it is apparent that the property in dispute was in possession of the persons mentioned in the report out of which one was doing business of hardware and the other was residing on rent but there is no report that there was any emergency of attachment on account of emergent need of likelihood of breach of peace or tranquility. The aforesaid order passed by the learned Magistrate on 17.10.2016 was challenged by the petitioners in Revision No.184 of 2016, which was allowed by means of the order dated 24.12.2016 and the matter was remanded back to pass a fresh order on merit on application under Section 145 Cr.P.C. after affording opportunity of hearing to the parties.

19. In pursuance of the aforesaid order though the petitioners had not appeared before the learned Magistrate but the learned Magistrate passed the impugned order dated 24.06.2017 without calling any fresh report and merely on the ground that there is no change in situation of circumstances under which the order dated 17.10.2016 was passed, whereas as discussed above, even the order dated 17.10.2016 was not passed in accordance with law after considering as to whether there is any emergency or need of passing the said order because there was no dispute in regard to possession on the property in dispute, which was also apparent from the pleadings made in the application by the respondent no.4 and the report of police. Both had admitted that the petitioners were in possession of the property in dispute. The learned Magistrate has

even not considered that two civil suits were pending, one by each party. The learned Magistrate also failed to record any findings as to when civil suits have been filed by the both the parties, as to whether the application under Section 145 Cr.P.C. was maintainable or not and even if it was maintainable, whether any order could have been passed in the facts and circumstances of the present case or not.

20. The suit for permanent injunction has been filed by the petitioners on 24.03.2014, bearing Regular Suit No.63 of 2014 and other suit has been filed by the respondent no.4 for declaration of his title, cancellation of sale deed dated 17.01.2013 and for permanent injunction on 24.02.2015. The pleadings made in the suit filed by the respondent no.4 are similar to the pleadings made in the application under Section 145 Cr.P.C. as disclosed above and a specific plea has been taken by the petitioner in paragraph- 21 of the petition that after coming to know about the filing of the suit of permanent injunction by the petitioners, the application under Section 145 Cr.P.C. has been filed by the respondent no.4, which has not been specifically denied in paragraph-33 of the counter affidavit and only a vague reply has been given. Para- 21 of the petition and para- 33 of the counter affidavit are extracted here-in-below:-

"21. That, in the meantime, by concealing the fact of the pendency of Regular Civil Suit for Permanent Injunction filed by the petitioners nos.1 and 2, the opp-party no.4, malafidely with quite false and flimsy averments, only with intention to dispossess the petitioners nos.1 and 2, from the ancestral property in dispute, filed an application under the provisions of Section 145 of the Code of Criminal Procedure before the opp-party no.2 on 30.1.2015. A true copy of the aforesaid application, filed under the provisions of Section 145 of the Code of Criminal Procedure before the opp-party no.2, by opp-party no.4, on 30.1.2015, is being filed herewith as Annexure No.16.

33- That contents of paragraph No. 21 of the petition are misconceived hence denied. It is stated that application u/s 145 Cr.P.C. was filed in the compelling circumstances."

21. In view of above, it appears that after coming to know about filing of the suit for permanent injunction by the petitioners, the application under Section 145 Cr.P.C. was filed on 30.01.2015. The

contention of the learned counsel for the respondent no.4 that he after coming to know about the pendency of the suit filed by the petitioners had filed a written statement on 16.04.2015, does not indicate that he came to know only at that time as no specific date of knowledge has been indicated, therefore, it is nothing but a misconceived plea. Even otherwise when admittedly the title was not in favour of the respondent no.4 and he had subsequently filed a suit for declaration of his title, he could have, instead of filing an application under Section 145, filed an application in the suit in which the relief for injunction as well as attachment could have been prayed and learned Magistrate without considering it and that there was no emergency of passing any order as no report was also called even after remand of the matter, and even no incident was also reported during this period which may indicate that a dispute likely to cause a breach of the peace exist, passed the impugned order, which could not have been passed. Learned Revisional Court also failed to consider it and the grounds of remand.

22. The Hon'ble Supreme Court, in the case of **Amresh Tiwari Vs. Lalta Prasad Dubey and Another (Supra)**, has held that it is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate. The relevant paragraphs 12, 13 and 14 are extracted here-in-below:-

"12. The question then is whether there is any infirmity in the order of the SDM discontinuing the proceedings under Section 145 of the Criminal Procedure Code. The law on this subject-matter has been settled by the decision of this Court in the case of Ram Sumer Puri Mahant v. State of U.P. [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] In this case it has been held as follows : (SCC pp. 428-29, para 2)

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we

see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for Respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue...."

13. *We are unable to accept the submission that the principles laid down in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.*

14. *Reliance has been placed on the case of Jhummal v. State of M.P. [(1988) 4 SCC 452 : 1988 SCC (Cri) 974] It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 of the Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate."*

23. The Hon'ble Supreme Court, in the case of **Mahant Ram Saran Dass Vs. Harish Mohan and Another (Supra)**, has taken similar view as aforesaid.

24. The Hon'ble Supreme Court, in the case of **Ashok Kumar Vs. State of Utterakhand and Others (Supra)**, has held that if after the enquiry under Section 145 of the Code, the Magistrate is of the

opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145 (1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court determines the rights of the parties thereto with regard to the person entitled to possession thereof. It has further been held that under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment and a case of emergency, as contemplated under Section 146 has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate must explain the circumstances why he thinks it to be a case of emergency and to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced. It has also been held that if the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The relevant paragraphs 9, 10 and 11 are extracted here-in-below:-

"9. The above order would indicate that the SDM has, in our view, wrongly invoked the powers under Section 146(1) CrPC. Under Section 146(1), a Magistrate can pass an order of attachment of the subject of dispute if it be a case of emergency, or if he decides that none of the parties was in such possession, or he cannot decide as to which of them was in possession. Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145 CrPC. It can only be read in the context of Section 145 CrPC. If after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof.

10. The ingredients necessary for passing an order under Section 145(1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of a breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In

other words, to infer a situation of emergency, there must be material on record before the Magistrate when the submission of the parties is filed, documents produced or evidence adduced.

11. We find from this case that there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant Ashok Kumar, whether it is legal or not, is not for the SDM to decide."

25. In view of above and considering over all facts and circumstances of the case, the impugned orders are not sustainable in the eyes of law for the reason that they have been passed without considering and recording any finding as to whether the application under Section 145 Cr.P.C. was maintainable or not in the facts and circumstances of the case, if maintainable, there was an emergency of passing an order of attachment as contemplated under Section 146, when Police Report does not indicate the same and it has also failed to consider that the petitioners are in possession, which is not disputed by either of the parties and in the Police Report and the suit for injunction filed by the petitioners and the suit claiming title, cancellation of sale deed and injunction by the respondent no.4 are pending before the civil court, in which unless the issue of title is determined, the long admitted possession of the petitioners can not be unsettled in the proceedings under Section 145 Cr.P.C. and in view of suit filed by the respondent no.4, there was no need of passing order of attachment. Thus, the impugned orders are not sustainable in the eyes of law and liable to be set-aside. The petition is liable to be allowed.

26. The petition is, accordingly, **allowed**. The impugned judgment and order dated 29.08.2018, passed in Criminal Revision No.141 of 2017 (Mohd. Kasim Usmani and Others Vs. State of U.P. and Others) by Third Additional Sessions Judge, Bahraich and the order

dated 24.06.2017 passed in Case No.23 of 2015, under Section 145 Cr.P.C. by the City Magistrate, Bahraich are hereby set-aside and the proceedings of Case No.23 of 2015 are quashed. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 18.4.2025
Haseen U.