



2026:AHC-LKO:23238

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

AFR

APPLICATION U/S 482 No. - 10324 of 2025

Indu Tandon

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko. And 2 Others

.....Opposite Party(s)

Counsel for Applicant(s) : Ashish Kumar Singh
Counsel for Opposite Party(s) : G.A., Priya Bharti, Saima Khan

Court No. - 15

HON'BLE BRIJ RAJ SINGH, J.

1. Heard. Ms. Sudiksha Singh, holding brief of Sri Ashish Kumar Singh, learned counsel for applicant; Ms. Tanvi Jain, learned AGA-I for State and Ms. Saima Khan, learned counsel for opposite party nos.2 and 3.

2. By means of present application, applicant has challenged the order dated 01.11.2025 passed by Additional Sessions Judge, Room No.1, Gonda (Revisional Court) in Criminal Revision No. 580 of 2024 (*Dileep Soni and Another Vs. State of U.P. and Another*), under Sections 438/440 of Bhartiya Nagrik Suraksha Sanhita (in short "BNSS") filed by the opposite party nos. 2 and 3 by which the Revisional Court set aside the order dated 24.10.2024 passed by City Magistrate, Gonda, under Section 164 of BNSS.

3. It has been submitted that applicant is old and widow lady whose son live out of town and house of applicant wherein the shop in question is situated at Mohalla Golaganj is registered on Form No.45 of Nagar Palika Parishad, Gonda in the name of Narain Kishore Tandon (husband of applicant) since 1946 and after the death of husband of applicant, his legal heir i.e. applicant and her son Bheeshm Tandon became owner and in possession of the house.

4. It has been further submitted that a temple was also constructed by husband of applicant in the premises of house and opposite party no.2,

knowing the fact that applicant is old, ill and weak lady, is illegally trying to encroach a room for shop, therefore, the applicant gave an application to District Magistrate/City Magistrate, Gonda on 25.05.2024.

5. It has been further submitted that the police of Kotwali Nagar, District Gonda has submitted a report on 03.08.2024/05.08.2024, under Section 164 BNSS stating therein that due to dispute regarding possession, the situation was under tension and some unpleasant incident may took place between the parties and prayed for the necessary action and recommended to attach the property under Section 165 BNSS.

6. It has been further submitted that both parties appeared before the City Magistrate, Gonda and on 05.09.2024, applicant gave an application under Section 165(1) BNSS stating therein that opposite party nos.2 and 3 are trying to possess the shop of applicant and prayed therein to attach the shop and appoint the receiver.

7. It has been further submitted that opposite party no.2 also appeared before the City Magistrate, Gonda and on 19.09.2024 filed an objection on false and frivolous fact praying therein to quash the proceedings under Section 164 BNSS.

8. It has been further submitted that the City Magistrate has recorded finding that in Civil Suit No. 1459 of 2024 preferred by opposite party no.2, the description of the shop is different from the description of the shop described in the objection dated 19.09.2024 filed by opposite party no.2 and the map mentioned in police *challani* report and mentioned in the suit is not same and after giving proper opportunity of hearing to all parties, Magistrate has attached the shop in question vide order dated 24.10.2024.

9. It has been further submitted that opposite party nos.2 and 3 preferred a revision before the Revisional Court on 28.10.2024 on false and frivolous fact stating therein in para 12 of revision that the order has been passed ex-parte whereas the order has been passed after giving opportunity to both the parties.

10. It has been further submitted that applicant appeared before

Revisional Court and filed her objection stating that no rent agreement has been executed by applicant and opposite party nos.2 and 3. The applicant also mentioned in para 5 of the objection that opposite party no.2 after drinking wine with his associates and friends abuses the applicant, taking the advantage of illness, oldness and weakness of applicant.

11. It has been further submitted that opposite party no.2 filed a civil suit for permanent injunction before Civil Judge (Junior Division)-I, Gonda on the false and frivolous fact on 01.07.2024 which was registered as Civil Suit No.1459 of 2024.

12. It has been further submitted that applicant appeared in the suit and filed her written statement denying all the wrong facts claimed by opposite party no.2, on 03.10.2025.

13. She has placed reliance on the judgment of this Court passed in **Pawan Singhania v. State of U.P.**, reported in **2023 SCC OnLine All 4579**. Relevant para is extracted herein-under:-

"6. Considering the rival contention of the parties, I am of the view that impugned order was passed mainly on the ground that civil suit is pending between the parties without looking to the nature of leave of civil suit and without even going into the question that civil suit is not regarding the possession but merely to protect the possession till the process of law adopted and from perusal of plaint of the suit No. 709 of 2009, it appears that there is no title dispute between the parties and private respondents did not claim ownership or possession on the basis of any right, therefore, there is no occasion to drop the proceeding under Section 145 Cr. P.C. when there is purely question of possession is pending before the Magistrate even in the judgement relied upon by the counsel for the revisionist. The Apex Court clearly observed that question of possession is involved then the Magistrate is empowered to take cognizance under Section 145 Cr. P.C. Even in the judgement of Full Bench of this court reported AIR 1959 All 141, Ganga Bux Singh v. Sukhdin has settled the issue.

"It has been held that the proceedings under Sections 145 Cr. P.C. are only in the interest of the maintenance of peace and not in the interest of

the preservation of the rights of any party. It was further held that the proceedings under Section 145 of the Code of Criminal Procedure are materially different from the proceedings in a proper suit.

From the nature of the provisions it is clear that the Magistrate has been given this power primarily to preserve peace. The individual rights are affected only incidentally.

The nature of the enquiry is quasi civil. It is an incursion by the criminal court in the jurisdiction of the civil court. It is, therefore, necessary that this incursion should be carefully circumscribed to the extent absolutely necessary discharging the function laid on the Magistrate of preserving the peace. The provisions of Section 145, Code of Criminal Procedure make that ample clear.

The Magistrate does not enquire into the merits of the claims of the parties or even their right to possess the subject of the dispute. He is only concerned with the question as to who was in actual physical possession on the relevant date. This also indicates that the starting point of the proceedings) must be the date when he was satisfied that an apprehension of a breach of the peace existed and not even he received the first information."

7. The Apex Court clearly held that proceeding under Section 145 Cr. P.C. cannot be dropped merely on the ground that one party had approached civil court not with regard to title or right to possession therefore in view of law and fact, the impugned order dated 28.04.2010 passed by the Additional Sessions Judge, Gorakhpur in Criminal Revision No. 217 of 2010 is absolutely erroneous and passed on non-application of mind, therefore, the impugned order is liable to be quashed and it is accordingly quashed.

14. Referring to para 6, it has been submitted that even if civil suit is pending between the parties without looking to the nature of leave of civil suit and without even going into the question that civil suit is not regarding the possession but merely to protect the possession till the process of law adopted, the Revisional Court has not applied its mind and the proceedings under Section 164 BNSS cannot be dropped merely on the ground that one party has approached the civil Court not with regard

to title or right of the possession, therefore, in view of law laid and fact, the proceeding was illegal.

15. On the other hand, Ms. Saima Khan, learned counsel for opposite party nos.2 and 3 has submitted that opposite party no.2 is running shop and he has also filed electricity bill. The predecessor of applicant namely Narain Kishore Tandon (husband of applicant) was land lord of shop of question which is situated in Mohalla Golaganj. Answering opposite party no.2 was tenant of late Narain Kishore Tandon.

16. Ms. Saima Khan, learned counsel has invited attention of this Court towards the police report wherein it is mentioned that there is shop running by answering opposite party no.2 and applicant wants to evict him but opposite party no.2 does not want to evict the shop.

17. It has been submitted that once the possession of shop is admitted, it is open for applicant to file suit for eviction but proceeding under Sections 164/165 BNSS cannot be allowed. Answering opposite party nos.2 and 3 are getting their livelihood by running a jewellery shop and their possession should not be disturbed.

18. To buttress her arguments, she has placed reliance on following judgments of this Court:

i. **Mahabirji Mandir Committee v. State of U.P.**, reported in **1992 SCC OnLine All 1154 : 1993 Cri LJ 2132**

ii. **Virendra Kumar v. State of U.P.**, reported in **2002 SCC OnLine All 1606 : 2003 Cri LJ 2709**

19. Emphasis has been placed on paragraph 9 of the judgment passed in **Virendra Kumar (Supra)**, is extracted herein-under :-

"9. The fact that the petitioner was all along in possession and never vacated disputed premises gains support from the Commission's report. As would appear from his report, he found certain documents belonging to the petitioner in the disputed shop. No explanation has been offered by respondent No. 3 as to how those papers could be found in the said premises when according to him, the petitioner having entered into a compromise left the premises in his possession. To my mind the petitioner

continued to possess the said premises and used the same as shop till it was attached and receiver was appointed. In my opinion, it is a fit case where the Court in order to do justice to the petitioner should come to his rescue and put him back in possession of his tenanted premises in question."

20. Paragraphs 5 and 6 of the judgment passed in **Mahabirji Mandir Committee (Supra)**, is extracted herein-under :-

"5. In order to appreciate the legal aspect of the case the provisions of S. 145, Cr. P.C. are necessary to be quoted. It is needless to say that a duty is cast on the Executive Magistrate to act in emergent situation and to exercise in public interest the power to prevent breach of the peace under the provisions of the Code, like Ss. 107/116, 144 and 145, Cr. P.C. No doubt all the proceedings including the proceedings under S. 145, Cr. P.C. are summary in nature but in every case the Magistrate has to act in a judicial manner and exercise his power strictly within the four corners of the Code. In this case it is the duty of the Magistrate to decide first the ambit of his jurisdiction and thereafter take a decision as to what provision in the particular facts and circumstances of the case can be invoked by him to preserve the peace and public tranquillity. The relevant provisions of S. 145, Cr. P.C. are as follows:—

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

(1) Wherever 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) to (3)

(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 any and which of the parties was, at the date of the order made by him, under sub-sec. (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 subsection (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under subsection(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-sec. (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-sec. (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-sec. (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), (8), (9) and (10)"

6. *From the bare perusal of S. 145. Cr. PC. it is clear that the jurisdiction to initiate proceedings under S. 145, Cr. P.C. arises in case only when*

there is a dispute about actual possession of any immoveable property which is likely to lead to the breach of the peace. In my opinion for initiation of proceedings under S. 145, Cr. P.C. it is necessary that both the parties must disagree on the question of actual possession or claim possession within two months of the preliminary order. On the other hand in my opinion proceedings under S. 145, Cr. P.C. cannot be initiated e.g. if one party admits the other party's possession on the property in dispute then in these circumstances the Magistrate should not initiate proceedings under S. 145, Cr. P.C. the question of possession is not in dispute but the Magistrate finds that there is danger of the breach of the peace then the proper course is to take action under S. 107, 116, Cr. P.C. Thus, what is necessary to give jurisdiction to the Magistrate to act under S. 145, Cr. P.C. is the fact that there must be a dispute in respect of actual possession of the property in dispute. Similarly, if the claim is vague or if from the perusal of the application for initiation of proceedings under S. 145, Cr. P.C. it is proved that there is no dispute in respect of possession or if it appears that one party is in possession of the property in dispute from a very long time then in these circumstances the Magistrate has no jurisdiction to initiate the proceedings under S. 145, Cr. P.C. In the case of Makhan Lal Raina v. Addl. City Magistrate, Lucknow, 1989 LCD 143, this Court in similar circumstances quashed the order holding that the proceedings under S. 145, Cr. P.C. should not have been initiated because admittedly the first party was in possession of the property in dispute. In the instant case from the perusal of the application (Annexure 3) it is clear that the petitioner is in possession of the temple and is managing the affairs of the temple for a very long time i.e. 1986."

21. She has submitted that it is clear that jurisdiction to initiate proceeding under Sections 164/165 BNSS, akin to Sections 145/146 CrPC (now repealed), arises in case there is dispute of actual possession of any immovable property, which is likely to lead to the breach of peace. There is a police report which shows possession of shop with answering-opposite party nos.2 and 3.
22. I have learned counsel for the contesting parties and have perused the records.

23. After going through record and the police report, it is clear that answering-opposite party nos.2 and 3 are claiming tenants of applicant and they are in possession of shop in question. The proceeding under Sections 126/135 BNSS has already been initiated between the parties by the Magistrate as is apparent from Police Report dated 03.08.2024. If there is any law and order situation certainly, the police is under obligation to look into the matter. The State Authority has to protect the parties but if actual possession is there with answering-opposite party nos.2 and 3, they cannot be dispossessed by proceeding under Sections 164/165 BNSS except in accordance with law by the order of Court. The case of answering-opposite party nos.2 and 3 is covered by the judgment of this Court passed in **Mahabirji Mandir Committee (Supra)** and **Virendra Kumar (Supra)**.

24. The Revisional Court has rightly set aside the order passed by the City Magistrate vide impugned order, which is hereby affirmed. The application is, accordingly, rejected.

25. It is, however, made clear that the observation made by this Court will not be considered by any Court or Authority in future and whatever is observed in this case, is only applicable for disposal of this application.

(Brij Raj Singh,J.)

April 2, 2026

Mohit Singh/-