



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 413/2004

1. Suresh Singh S/o Shri Bhanwar Singh (since deceased), by caste Rajpurohit, aged about 42 years, resident of Rohini Mataji Kuldevi Rajpurohit Trust, (Gundecha Trust) (HQ Sadari), District- Pali.

2. Shri Rohini Mataji Kuldevi Rajpurohit Gundecha Trust, Mada (Sadari) Tehsil:- Desuri, District- Pali, through it's The Secretary.

Versus

1. State of Rajasthan

2. Mod Giri S/o Lalgiri, by caste Sadari, resident of Tehsil- Desuri, District- Pali.

For Petitioner(s)	:	Mr. Sajjan Singh Mr. Rajat Rajpurohit
For Respondent(s)	:	Mr. J. Gehlot Mr. Shrawan Singh Rathore, DyGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Order Reserved On	:	08/05/2025
Order Pronounced On	:	16/07/2025

1. The instant criminal revision petition is filed under Sections 397 and 401 of CrPC has been preferred by the petitioners against the order dated 19.06.2004 passed by the learned Additional Sessions Judge, Bali, in Criminal Revision No. 25/2002, whereby the revision petition was allowed and the order dated 30.03.2001 passed by the SDM, Bali, in Criminal Misc. Case No. 12/2001 under Sections 145 and 146 CrPC was set aside, including the order of attachment and appointment of receiver under Section 146 CrPC.



2. This petition was originally filed by Shri Bhanwar Singh, who unfortunately passed away on 09.05.2008. Thereafter, an application for substitution was filed by Shri Bhopal Singh, the then President of the Trust, on 28.09.2008, and the substitution was carried out in accordance with law. Subsequently, Shri Bhopal Singh also passed away on 24.01.2014. Following his demise, other office bearers have held the post of President of the Trust from time to time. At present, the petitioner No.1 has been unanimously elected to the post of President of the Trust, and a requisite application dated 30.09.2019 was submitted before the Assistant Devasthan Commissioner for making necessary entries to that effect.

3. Briefly stating the facts of the case are that the present matter arises out of proceedings initiated under Section 145 of the CrPC concerning a land dispute alleged to be of such nature as to likely cause a breach of peace. The Sub-Divisional Magistrate, upon receiving a police report, passed a preliminary order under Section 145(1) CrPC on 30.03.2001, directing the concerned parties to appear and submit their claims regarding actual possession of the disputed land. The Magistrate also passed an order of attachment under Section 146(1) CrPC. Aggrieved by these orders, Respondent No. 2 filed a revision petition before the learned Additional Sessions Judge, who set aside the preliminary order and the consequential attachment and receiver order. The learned Additional Sessions Judge, while allowing the revision, observed that there was no sufficient material to establish the existence of a dispute likely to cause breach of peace on the date



of the preliminary order and held that the possession of Respondent No. 2 was wrongly disturbed. The petitioner has now approached this Court challenging the said order of the learned Additional Sessions Judge.

4. Heard learned counsels appearing on behalf of the parties and learned DyGA appearing on behalf of the State and perused the material available on record.

5. Upon perusal of the record, it is evident that the respondent No.2 has been in possession of the disputed land since the time of his ancestors. This fact stands prima facie established, and notably, there appears to be no dispute between the parties regarding possession. It is imperative to discuss the precedents set by Hon'ble the Supreme Court concerning Sections 145 and 146 of Cr.P.C. and to fully comprehend the legal position, it is necessary to first reproduce these provisions, which are provided below for ready reference:-

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, persue 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 sub -section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

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

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

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

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

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



**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.

From bare perusal of these Sections, this Court feels that before initiating a proceeding under Section 145 Cr.P.C. or moving an application under Section 146(1) of the Cr.P.C., circumstances suggesting imminent danger of breach of peace or like circumstance to presume instant threat to public peace and tranquility has to be shown with the assistance of cogent and reliable material. It should not be a vague or bald assertion rather should be supported with strong material. The law in respect of proceeding under Sections 145 & 146 Cr.P.C. is no more res-integra that before initiating any proceeding under Sections 145 & 146 Cr.P.C. there has to be a serious question of possession and a



situation where it is not comprehensible as to which party was in possession of the land in question at the relevant point of time or the circumstances suggesting that parties are bent upon to take forcible possession of the immovable property and therefore, there is an imminent danger to public peace and tranquility. The law in this regard has been discussed and dealt with by this Court in the matter of ***Ashoknath Chela Kevalnath Vs. State of Rajasthan*** ***passed in SBCRLMP No.1949/2022 decided on 16.11.2022.***

The relevant part of the order is being reproduced as under:

"The law on this point is not res integra that whenever an Executive Magistrate is satisfied from a report of the Police Officer or upon other information that a dispute which is likely to cause breach of 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 with regard to the fact of actual possession of the subject of dispute.

Upon appearance of the parties, the Executive Magistrate is supposed to consider the claims of the rival parties in respect of the fact of actual possession of the subject of dispute. It is the requirement of law that prior to passing any order of attachment of the property and appointment of a receiver, the Magistrate should apply his mind as to whether there are emergent circumstances and eminent danger of breach of peace or not and order of attachment of property and appointment of a receiver under Section 146(1) Cr.P.C. can be passed only after conducting a preliminary inquiry under Section 145 (1) Cr.P.C. The Executive Magistrate is not supposed or rather authorized by the law to adjudicate the right or title of any party over the property in question. The Executive Magistrate is not empowered to pass order of taking the possession from one party and deliver it to the other party or to the receiver, if the question of possession is not under dispute. There is a distinction between right to have possession and question of possession. Right to possession can



be decided by a competent Civil/Revenue Court after adjudication of the issues and pleas of the parties to the lis and then it can pass a verdict as to which party has a right to have possession but when it comes to question of possession and the Executive Magistrate is satisfied that none of the parties were then in such possession or the Magistrate was unable to satisfy himself as to which of them was in possession of the subject of dispute and by placing facts strong apprehension has been shown regarding breach of peace and tranquility in respect of the conflict of possession then the Executive Magistrate can very well exercise power under Section 145 Cr.P.C. and 146(1) Cr.P.C. The Executive Magistrate is required to record satisfaction of emergent nature of the case as well as eminent danger of breach of peace or tranquility before passing an order of attachment."

6. In the case of **Ram Sumer Puri Mahant v. State of U.P. and Ors.** reported in **(1985) 1 SCC 427**, it was held that since the civil proceedings are already going on in civil Court relating to the question of possession then continuing a parallel criminal proceedings is unjustified. The Court emphasized that the civil court's decree is binding on the criminal court and that multiplicity of litigation should be avoided.

7. In the case of **Kanya Bai v. Prahlad** passed in **S.B. Cr. Misc. Petition No. 688 of 1997 decided on 10.12.1997** by the coordinate bench of this Court, Jaipur Bench, it was held that when a party involved in a property dispute has approached a competent court in a good faith for the determination of their rights, and the court is capable of issuing appropriate orders regarding the security of the property, then initiating criminal proceedings is not warranted. However, if there is an apprehension of a breach of public peace between the parties, necessary action



can be taken under Sections 107 and 116, read with Section 151 Cr.P.C.

8. This Court is of the considered view that no incident of bloodshed or breach of peace has occurred in the present case with regard to retention or forceful taking possession of an immovable property, therefore, initiation of proceedings under Sections 145 and 146 of the Cr.P.C. appears to be unwarranted and uncalled for. Furthermore, if the land in question admittedly belongs to a private individual, then passing an order that fails to specify the duration for which the property shall remain in police custody renders the direction ex facie illegal, vague and unsustainable. Additionally, it is noted that there is no civil or revenue litigation pending before any competent court concerning the said property. Accordingly, continued possession of the land by the police for forever, in the absence of any such proceedings, is not justified rather an alien thing to the legal notion. In such circumstances, it would be just and proper to restore possession to the Respondent No.2.

9. After considering the facts and circumstances of the case, as well as the legal principles discussed above, this Court finds that, in the absence of any breach of peace or imminent danger thereof, initiating criminal proceedings under Sections 145 and 146 of the Cr.P.C. constitutes a misuse of the legal process. When the dispute pertains to the title and possession of the property, such matters fall within the exclusive jurisdiction of the competent civil court. The orders passed by the civil court are binding on the criminal



courts. In such circumstances, the learned SDM has committed a legal error in passing the impugned order dated 30.03.2001 without due consideration of the evidence available on record and the contents of the complaint. Therefore, this Court finds it appropriate to uphold the order passed by the learned Additional Sessions Judge. However, in the event of any apprehension of breach of public peace between the parties, appropriate action may be taken under Sections 107 and 116, read with Section 151 of the Cr.P.C (corresponding to Sections 126, 135 r/w 170 of BNSS respectively) which in this case has already been taken.

10. The proceedings initiated under Sections 145 and 146 of the CrPC are found to be an abuse of the process of law. In view of the above, the impugned order dated 30.03.2001 is not sustainable in law and is liable to be set aside, and the order dated 19.06.2004 passed by the learned Additional Sessions Judge, Bali, is found to be well-reasoned and deserves to be upheld.

11. The competent court, be it civil or revenue shall proceed with the matter and is at liberty to pass appropriate orders pertaining to possession, khatedari, or ownership of the disputed property. Any such adjudication shall be binding upon the criminal courts.

12. The Superintendent of Police concerned shall ensure that peace and public order are maintained, especially in the event of any apprehension of breach of peace between the parties. However, nothing shall preclude the authorities from initiating appropriate proceedings for prevention of breach of peace as



contemplated under Sections 126 and 135 r/w Section 170 of the
BNSS.

13. Accordingly, the instant petition is dismissed.

14. Stay applications, if any, stands disposed of.

(FARJAND ALI),J

2-Mamta/-

