

Code of Criminal Procedure, 1898

Section 146 - Power to attach subject of dispute: Notes Scope.-Section 146 cannot be invoked before inquiry is initiated on merits

I.B). 1959 Cr LJ 705: AIR 1959 Cal 366. Irrelevant.-The mere pendency of a suit in a Civil Court is wholly an irrelevant circumstance and does not take away the dispute which had necessitated a proceeding under Section 145. The possibility of a breach of peace would still continue. 1960 Cr LJ 1112: AIR 1960 Mys 203. Under Section 145 the Magistrate must take all evidence and come to a definite decision, that is, there can be no reference to the Civil Court by him. 1959 Cr LJ 743 : AIR 1959 Mani 29. On a Civil Court having made delivery of possession of the land to one of the parties the Magistrate is precluded from investigating further. 1959 Pat LR 21. Magistrate need not go into the question of rights of the parties.-1960 BLJR 328: 1960 Cr LJ 1477: AIR 1960 Pat 505. Powers and duties of Magistrates.-The proviso to sub-section (4) of Section 145 does not preclude a Magistrate from calling as a witness any other person whose affidavit has not been filed to examine him, if he so desires, in order to decide the question of possession. 1959 Raj LW 473: 1960 Cr LJ 116: AIR 1960 Raj 15. The provision in Section 145 empowering a Magistrate to attach the subject of dispute cannot be dissociated from the subject-matter of the enquiry and the question of possession involved in such enquiry. 1960 Cr LJ 582: AIR 1960 J and. K. 66. So long as one person claims to be in possession to the exclusion of others and alleges that some other person is unlawfully by force interfering with his possession, the Magistrate apprehending breach of the peace is justified to take action under Section 145, Cr. P. C. The enactment of sub-section 15) of Section 145, Cr. P. C., does not derogate from the Magistrate his power to drop the proceedings himself, if he is satisfied as to non-likelihood of any further breach of peace, 1959 MPLJ (Notes) 179. A Magistrate can pass order of disposal of the property which is the subject of dispute in proceedings under Section 145(5) but he will be debarred from doing so if he has to enter into an enquiry for that end. 1958 All LJ 515. In order to appoint a Receiver of any immovable property, the Magistrate must first attach the same. 1960 MPLJ (Notes) 73. The foundation of the jurisdiction of the Magistrate under Section 145 is an apprehension felt by him with regard to the breach of the peace. 1959 Jab LJ 246: 1959 MLJ 725. Under Section 145(1), read with sub-section (9), there was no such limitation upon the power of the Magistrate to examine the witnesses. (1959) Nag LJ (Notes) 43. Type of possession.-As in Civil law Section 145, Cr. P. C., contemplates a case of actual physical possession and even in a dispute between master and servant, a person in possession of immovable property can only be dispossessed in due course of law, 1959 Raj LW 140: 1959 Cr LJ 379: AIR 1959 Raj 63. The Magistrate can restore the party to possession from whom possession was taken at the time of attachment, provided there is clear material on the record to show that. 1960 Raj LW 37 : 1960 Cr LJ 1138 : AIR 1960 Raj 216. Under Section 145, the Magistrate has to decide as to the fact of actual possession of the subject of dispute on the date of the order. 1958 BLJR 174: 1959 Cr LJ 1205 : AIR 1959 Pat 476. Even a person in constructive possession has a right to come to Court if such possession is interfered with. 1957 Raj LW 507 : 1959 Cr LJ 236: AIR 1959 Raj 50. A provisional order of a Magistrate under section 145, Cr. P. C., in regard to possession irrespective of the rights of the parties cannot enable a person to resist the suit under Section 180 of the U. P. Tenancy Act. 1959 All LJ 557 : 1959 Cr LJ 1223 : AIR 1959 SC 960. Mere exercise of an isolated or stealthy act of possession cannot constitute actual possession in the eye of law. 1960 BLJR 328: 1963 Cr LJ 1477: AIR 1960 Pat 505. Order covering larger area than that contested in the proceeding must be held to be good to that extent. 1958 Pat LR 352 : 1959 Cr LJ 634: AIR 1959 Pat 196. Function of the Magistrate.-A police officer on being asked by a Magistrate to report as to the apprehension of the breach of the peace, cannot assume the functions of the Magistrate inasmuch as he reports that the petitioner's allegations were baseless. 1960 All LJ 782: (1961)1 CrLJ 15: AIR 1961 All 38. Order under Section 145(6) does not decide party's title.-1959 All LJ 557 : 1959 Cr LJ 1223 : AIR 1959 SC 960. Decision of a Magistrate not binding on a Civil Court.-AIR 1959 Pat 406. In a proceeding under Section 145, the Magistrate has not to enter into question of title or the right to possess, and he can invoke his jurisdiction only in existence of dispute likely to cause breach of the peace. 1959 CrLJ

89: AIR 1959 Tri 1. The fact that the property was under attachment under Section 145(4) in no way affects the legality and effectiveness of the delivery of possession granted by the Civil Court. 1959 Pat LR 21. When Civil litigation is pending, the Magistrate should choose Section 107 as a choice between Section 145 and Section 107. 1959 Mad LJ (Cr) 211: 1959 Cr LJ 621 : AIR 1959 Mys 122. Use of word 'wrongfully'. -The use of the word 'wrongfully' does not necessitate any investigation into the claim or right of the person who dispossesses, or in other words, it is not necessary to decide whether he is the rightful owner or a trespasser. 1960 BLJR 328: 1960 Cr LJ 1477 : AIR 1960 Pat 505. Parties not mentioned in the order are not bound by it. -Persons not mentioned as parties, are not bound by order under Section 145. However, this is no ground to vacate that order even against such persons. 1958 Pat LR 352: 1959 CrLJ 634: AIR 1959 Pat 196. Effect of amendment introduced. -Viewed against the amendment effected by Section 2, Bombay Separation of Judicial and Executive Functions Act, the order passed by the Magistrate concerned who was to function as a Judicial Magistrate from 1-9-59 was without jurisdiction. 1960 Nag LJ (Notes) 108. 1. Defect of parties: Effect. -Proceedings under Section 145 cannot fail on account of defect of parties or on the ground of a proper party not impleaded. 1959 Cr LJ 970: AIR 1919 Cal 505. Dispute as to right to collect toll. -In regard to a dispute with respect to right to collect toll in a Bazar, the proper course for a Magistrate is to have recourse to Section 145 or Section 147 rather than to Section 114. 1958 CrLJ 1554: AIR 1958 Tri 47. Authorised agents are as much disputants as owners. -Authorised agents who are really disputants before the Magistrate, cannot oust the Magistrate of his jurisdiction to proceed with the case simply because owners are not on record. 1959 Raj LW 140: 1959 Cr LJ 379: AIR 1959 Raj 63. Right of intervenor tenants. -The intervenor tenants who were not parties to the proceedings before the Board were not bound by its decision and as such proceedings under Section 145 at the instance of intervenor party could not be dropped by the Magistrate. 1960 BLJR 384. Effect of notice. -But once it is found that the notice of attachment of the land in dispute was duly served at the spot it necessarily follows that all persons interested in the land were aware of the fact that a proceeding under Section 145 had been started. 25 Cut No rules in Section 145 to regulate sales. -Section 145, Cr. P. C., does not provide rules regulating sales held under this section. The only thing to be considered is as to the conduct of the officer conducting the sale. 1958 Mad LJ (Cr) 338: 1959 Cr LJ 340: AIR 1959 Mys 50. Sapurdar's custody. -In a case of attachment of standing crop under Section 145, Cr. P. C., and given in custody of sapwdar who in absence of evidence of misappropriation, commits no offence. 1960 Cr LJ 780: AIR 1960 All 380. Mere contravention of Section 145(1) does not justify vacating order. -Unless justice has been miscarried, the mere contravention of the provisions of S"ction 145(1), Cr. P. C., would not justify setting aside the order. ILR (1957)9 Ass 75: 1959 Cr LJ 303: AIR 1959 Ass 54. After order under Section 145, no proceeding under Section 147 is maintainable. -It was not open to the party after the earliest order was passed to initiate another proceeding under Section 147 in regard to the offerings alone dissociated with the land containing the temple. 1960 Pat LR 18: 1960 CrLJ 506: AIR 1960 Pat 189. Presumption as to the state of affairs. -There is presumption that the state of affairs which has once existed, continues until contrary is shown and for this purpose the judgment of the Civil Court can be looked into. 1959 MPLJ (Notes) 10. Default of complaining party. -If the complaining party is absent, the Magistrate can proceed ex parte and hear the opposite party present and his witnesses. 1959 Cr LJ 774: AIR 1959 Tri 25. Police not to decide suitability of action. -On reference by a Magistrate, the police : are bound to make a report under Section 202 but they cannot decide as to the suitability of action under Section 145. 1959 Cr LJ 742 : AIR 1959 Mani 30. There is no bar in law to fresh proceedings under Section 145 when the application is made within two months of the date of the obstruction resulting in dispossession of a party. 1959 Raj LW 140: 1951 Cr LJ 379 : AIR 1959 Raj 63. The principles of equity do not apply to an order passed by a Magistrate under Section 145(4), Cr. P. C. 1959 All LJ 116: 1959 Cr LJ 261 : AIR 1959 All 141 (FB). Equitable principles cannot be engrafted upon a statute. -There is no warrant to engraft equitable principles upon a statutory fiction and deem the order to have been passed at the date of the petition, when in fact it was not on that date. (1960)2 Andh WR 383. Pleader commissioner's report need not be proved. -By virtue of the amendments made in the Code in 1955, the report of pleader commissioner need not be formally proved, but his opinion as to the possession of any party as not being based upon his personal knowledge cannot be taken into consideration. 1960 Pat LR 30: AIR 1960 Pat 240. Invocation of inherent powers not allowed under Section 145. -Inherent powers of the High Court under Section 561-A, Cr. P. C., cannot be invoked in a matter under Section 145, Cr. P. C" as the revisional powers themselves had to be conferred by a statute and were being exercised only by reason of Section 435. (1959)1 Andh WR 61: 1959 Mad LJ (Cr) 29. Although by reason of the amendment of Section

145, Cr. P.C., examining of witnesses is no longer necessary and the Magistrate can come to his decision on the question of possession on the basis of affidavits filed by the parties, the Magistrate should consider those affidavits as they take the place of the oral evidence. 1960 BLJR328: 1960CrLJ1477l MR 1960 Oat 505. Administrative order should appear as such on the face of it.-Any administrative order should ex facie be made to appear distinctive as not to give scope for further proceedings. (1959)2 Andh WR 64 : 1959 MLJ (Cr) 550. . Additional Sessions Judge competent to suspend order under Section 145.-In a revision application against a final order in proceedings under Section 145, the Additional Sessions Judge is competent under Section 435(1), Cr. P. C., to suspend the execution of any sentence or order. 1959 Nag LJ (Notes) 35. fresh application can be based on the same facts.-Where a petition under Section 145 is dismissed for want of a specific allegation regarding the danger of a breach of the peace, a fresh petition can be based on the same facts and the Magistrate cannot be said as reviewing his prior judgment so as to contravene the provisions of Section 369, Cr. P. C.; nor Section 403 has application to such a case as dismissal of complaint is not acquittal, 62 PLR 568: 1960 Cr LJ 1232 : AIR 1960 Punj 467. There is nothing in the Code to preclude an applicant to make a fresh application under Section 145, the previous application having been dismissed in default, provided his second application has been filed within two months of the alleged deprivation of possession. 1957 Raj LW 509: 1958 Cr LJ 1548: AIR 1958 Raj 351. Under Section 145 as amended by Act XXVI of 1955, only the affidavits of witnesses should be put in evidence, and if needs be only those witnesses are to be examined whose affidavits have already been put in. 1959 Cr LJ 138t: AIR 1959 All 763 A Magistrate is competent to call and examine any person to decide question of possession even in absence of his affidavit. 1960 Or LJ 116: AIR 1960 Raj 15. Failure by Magistrate to consider the affidavits filed vitiates his order. 1958 Pat LR 299: 1959 Cr LJ 1098: AIR 1959 Pat 430. The Magistrate must consider affidavit and give reasons for accepting the affidavit of one or the other party. He cannot ignore them on the ground that there is affidavit against affidavit and base his finding of possession on documents or other circumstances. 1960 BLJR 419: 1960 Cr LJ 1486: AIR 1960 Pat 513. In view of the latest amendment made in Section 145, Cr. P. C., it is necessary not to examine witnesses in Court, but it does not follow that there is no necessity even to consider the affidavits. 1960 Pat LR 30: AIR 1960 Pat 240, In every case under Section 145, the Magistrate is bound to summon both the parties and give them an opportunity to put in written statements on affidavits and such documents as they choose to file. 1959 Nag LJ (Notes) 7. Proper orders.- Unless the petitioner was prohibited from going over to the land in dispute by order, it is not a proper order of attachment. 1960 Cr LJ 891 : AIR 1960 Ass 109. Where records show actual delivery of possession of the property to the petitioner and the report of the responsible Police Officers alio show that the petitioner had actually raised the crops and there was no apprehension of the breach of the peace, the action under Section 145 is clearly unwarranted. 1960 MLJ (Cr) 286. Where the Magistrate totally disregards the procedure as amended, he commits an error. 1959 Jab LJ 246: 1959 MPLJ 725: 1959 MPC 409. A Magistrate can pass ancillary orders regarding the custody of the attached property but he should not evade the provisions of Cr. P. C. by adopting a short-cut to save himself from the trouble of hearing several proceedings under Section 145. 25 Cut LT 340: 1959 Cr LJ 624: AIR 1959 On 81. Under the new procedure only the affidavits suffice for proceeding under.- Under the old procedure the parties were entitled to examine witnesses in support of their respective contentions whereas under the new procedure affidavits of parties and their witnesses would suffice, and the trial of a pending proceeding in accordance with the new procedure prescribed by the 1955 amendment is not invalid. ILR 1959 Cut 551: 1960 Cr LJ 984: AIR 1960 Ori 61. Where parties have had recourse to a Civil Court, it is still open to the Magistrate to invoke the provisions of Section 107 of Cr. P. C. 1959 MLJ (Cr) 211 : 1959 Cr LJ 621 : AIR No retrospective action.-All proceedings under Section 145 instituted prior to its amendment must be decided in accordance with the procedure then in force and not according the amended procedure. 1959 BLJR 23: 1959 Cr LJ 761: AIR 1969 Pat 284. High Court not to interfere with findings of fact.-The extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India is not to be exercised for interfering with findings of fact. 1958 Ker LT 1067: 1959 Cr LJ 1082: AIR 1959 Ker 275. The High Court will not interfere in revision with a finding of fact under Section 145, Cr. P. Code. 1959 Cr LJ 705: AIR 1959 Cal 366. In cases of miscarriage of justice, the High Court has jurisdiction to interfere in revision in respect of order under Section 145. 1995 Andh LT 610. The High Court's power under Section 439, Cr. P. C., and under Article 227 of the Constitution are primarily intended to see that the subordinate Courts do not discard the canons of law and take to what they consider as short cuts to justice. 1959 Mad LJ (Cr) 338 : 1959 Cr LJ 340: AIR 1959 Mys 50. Power of the Magistrate.-

On reversal of the decision of competent Court in appeal, the Magistrate has power to re-attach the property in dispute, and he does not become functus officio after his first order in favour of a party successful in the first Court. 1959 All LJ 281 : 1959 Cr LJ 1257 :AIR 1959 All 671. The Magistrate may make a reference to the Civil Court only for the purpose of deciding about possession, but the criminal proceeding even on reference does not change its character and retains its old moorings. 1959 All LJ 365:1959 CrLJ912; AIR 1959 All 467. Magistrate is not invested with power to recover damages from a lessee under receiver appointed by him for alleged waste by the lessee. 1959 Cr LJ 196: AIR 1959 Ker 55. Limitation.-If an enquiry is not concluded by the Civil Court within the period of three months as prescribed by Section 146(1-B), it cannot at all vitiate the decision of the Court. 1959 Cr LJ 705: AIR 1959 Cal 366. Finding of a Civil Court given in reference can be challenged only by a regular suit and not by means of writ petition. 1960 Cr LJ 1279 : AIR 1960 All 599. Under sub-section (1-A) of Section 146 it is not open to the Civil Court to call for further evidence. All that is necessary under Section 146 is that the parties must be given ample opportunity to place their respective cases before the Civil Court. 1960 BLJR 428; 1960 Cr LJ 1487 : AIR 1960 Pat 519. Whether offence committed.-Where the wall under attachment under Section 146, Cr. P. C., was in dilapidated condition and on account of the marriage of a girl in the family of one of the parties the wall was repaired without the permission of the Court, no offence was committed under Section 188, Penal Code. 1960 Cr LJ 387: AIR 1950 Pat 125. Perversity of the order.-For perversity of the order dropping proceedings after two and a half years without deciding question of possession, see Section 145 (4), (5), supra. 1960 CrLJ 1 17: AIR 1960 Tri 1. Mansif's Jurisdiction.-A dispute concerning property worth more than Rs. 10,000 can be referred to the Munsif under Section 146 (1), because in the dispute, it is not the proprietary right of property which is involved but as to who was in possession at particular time, 1960 Cr LJ 1279: AIR 1960 All 599. High Court's powers-The restriction placed on the revisional powers of the High Court by Section 146 (1-D), Cr. P. C, is a wise restriction conceived in the public interest and involves no invasion of the fundamental right or diminution of the paternal and supervisory jurisdiction of the High Court. 1960 Cr LJ 489 : AIR 1960 Mad 169. The High Court's power in revision is limited to ascertaining whether the Criminal Courts have implemented the decision of the Civil Courts. (1958)2 Mad LJ 619: 1959 Cr LJ 335 :AIR 1959 Mad 111. Sanctity of the Civil Court's findings.-There cannot be even indirect or collateral attack on the finding of Civil Court through an appeal or an application for revision or revision of the order of the Magistrate passed under Section 146 (1-B). 1958 All LJ 270: 1959 Cr LJ 1043: AIR 1959 All 568. Even if a property had been kept under attachment by the Magistrate without jurisdiction, the High Court would not in revision deliver the property to a party declared by a competent Court not to have any title to it. 1959 All LJ 281: 1959 CrLJ 1257 :AIR 1959 All 671. "Further evidence", meaning of.-The expression "further evidence" only means "evidence which is not already on record". It may consist of statement of parties, of other witnesses or of documents, only restriction being that evidence should not already be on record. 1961 AWR (HC) 107. Where after proceeding under Section 145 have been referred to the Civil Court, the High Court passes an order of stay on a transfer application, the Civil Court is immediately divested of jurisdiction and cannot proceed with the matter even though the stay order had not reached the Court but was merely brought to the notice of the Court. If the Civil Court had no knowledge of the stay order and any proceedings are continued such proceedings would be a nullity. AIR 1962 All 80. Where a Civil Court had on a reference under Section 146 given a finding it cannot be directly challenged, as it is not subject to appeal, review or revision. The order of the Magistrate based on the civil court finding therefore cannot be attacked in a revision against the order of the magistrate. 1963 ALJ 1101. The Code of Criminal Procedure does not provide for the setting aside of an ex parte order, consequently every order whether passed ex parte or otherwise must be passed on merits and in the eyes of law an ex parte order would be at par with an order passed on merits, the only difference would be that on contest there would be evidence of both the parties. Where evidence had been taken and thereafter a reference made, the ex parte order passed on reference would be a one sided order, but would be an order passed on consideration of the evidence of both parties. No restoration application would be maintainable. 1964 ALJ 668. The expression "Civil Court" used in Section 146 includes Revenue Courts as well and the word "jurisdiction" used in the expression 'Civil Courts of competent jurisdiction' obviously means territorial jurisdiction. AIR 1963 All 17. To a reference made to the Civil Court under Section 146 (1), the procedure laid down in that section is applicable and the Civil Court cannot engraft the provisions of Order IX, Civil Procedure Code to such a proceeding. 1964 ALJ 635. [(1) If the Magistrate is of opinion that none of the parties was then in such

possession, or is unable to decide as to which of them was then in such possession, of the subject of dispute, he may) attach it, and draw up a statement of the facts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any and which of the parties were in possession of the subject of dispute at the date of the order as explained in sub-section (4) of Section 145; and he shall direct the parties to appear before the Civil Court on a date to be fixed by him: Provided that the District Magistrate or the Magistrate who has attached 60. by Act 26 of 1955, S. 19, for the former sub-section (1). the subject of dispute may withdraw the attachment at any time, if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute. (1-A) On receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties, decide the question of possession so referred to it. (1-B) The Civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding under Section 145 in conformity with the decision of the Civil Court. (1-C) The costs, if any, consequent on a reference for the decision of the Civil Court, shall be costs in the proceedings under this section. (1-D) No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed. (1-E) An order under this section shall be subject to any subsequent decision of a Court of competent jurisdiction.] (2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit [and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court], appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure (1882) : [Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.]