Hanumappa Vs. Kondappa

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Court : Karnataka

Decided On : Jun-28-1963

Reported in : AIR1964Mys195; 1964CriLJ319; (1963)2MysLJ3

Judge : N. Sreenivasa Rau, C.J. and ;Hombe Gowda, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 107, 144, 145, 145(1), 145(6), 146, 146(1), 146(1)-B, 146(1)-D and 146(1)-E; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955

Appeal No. : Criminal Revn. Petn. No. 190 of 1962

Appellant : Hanumappa

Respondent : Kondappa

Advocate for Def. : C.B. Sreenivasa Rao, Adv.

Advocate for Pet/Ap. : M.S. Gopal, Adv.

Judgement :

N. Sreenivasa Rau, C.J.

1. This revision petition is by the First Party in a proceeding under Section 145, Code of Criminal Procedure, against the order dropping the proceedings as the learned Magistrate found that the two contending parties were in joint possession of the land in dispute and withdrawing the order of attachment of the land. The

circumstances of the case are as follows:

2. The land in dispute originally belonged to two brothers Angadi Munisamappa and Angadi Kanakiah who granted a lease of the land under a registered lease deed dated 15-3-1956 to the two persons who are now the contesting parties, namely, Hanumappa and Kondappa, the latter being the son-in-law of the former. Later on the owners executed a registered usufructuary mortgage in favour of their tenants to secure a sum of Rs. 7,000/-advanced on the mortgage. Some time later, that is on 17-9-1959, the owners sold the land to the mortgagees. According to the first party (the present Petitioner), the lease, the mortgage and the sale were really in his favour solely though the name of his son-in-law, the second party (the present Respondent) was included on account of their close relationship, the first party himself having advanced the whole of the mortgage amount and the purchase price and he has been in possession of the land all through.

According to the second party, he was also a real party to all the three transactions as recited in the respective documents and even from the time of the lease the two parties have been in possession of the two portions of the land, the first party being in possession of the western portion and the second party of the eastern portion. The first party complained to the police that the second party was trying to interfere with the crops that he had raised on the land. The police, after enquiry, instituted proceedings under section 145 Cr. P. C. before the District Magistrate, Kolar, who being satisfied that there was a dispute about the land and that there was a likelihood of the breach of the peace, made a preliminary order under Section 145, Cr. P. C., on 15-3-1961 and directed attachment of the land and appointed the Tahsildar, Kolar Taluk, as receiver.

3. The learned District Magistrate after enquiry, felt that he was not able to decide which of the parties was in possession of the land in dispute and forwarded the record of the proceeding to the Munsiff, Kolar, to decide whether any or each of the parties was in possession of the land. The learned Munsiff, after enquiry into the matter, came to the conclusion that both the parties were in joint possession and enjoyment of the land in dispute on the date of the preliminary order. On receiving this finding from the learned Munsiff, the District Magistrate heard both

the parties and taking the view that when both the parties are found to be in joint possession, the only course open to the Court is to drop the proceedings under Section 145 Cr. P. C., and remove the attachment if attachment had been ordered, passed the order mentioned above. The first party has preferred this revision petition against the order.

4. It is contended by him that when at the time of the preliminary order the Court had found that there was a dispute likely to cause breach of the peace, it was incumbent on the Court to give a finding whether that state of affairs still continued or not on the date of the final order and that it had failed to exercise its jurisdiction in not giving such a finding. The reference to the Munsiff, Kolar, is challenged as illegal, since the property in question exceeded the pecuniary jurisdiction of the Munsiff. It is urged that the finding that the two parties were in joint possession did not preclude the Court from continuing the attachment and that the Court should have so directed. It is also complained that the Learned District Magistrate failed to notice that the second party claimed possession only of the eastern portion of the land. The Petitioner further complains that the learned District Magistrate failed to give suitable ancillary directions.

5. The question whether, when the Magistrate found the two contending parties in joint possession the only order that can be made is to drop the proceedings under Section 145 or whether in such a case an older for attachment can be made, came up for consideration in Cr. R. C. No. 7 of 1962 on a reference by the Sessions Judge, Bidar. The single judge before whom the matter come up for hearing considered that the matter was an important one in regard to which conflicting view had been taken by the High Courts and referred the case to a Bench. As the same question was involved in this case also, the two cases were posted for hearing together. After arguments were heard Cr. R. C. No. 7/1962 was disposed of without going into the above-mentioned points as, on account of supervening circumstances, it became unnecessary to do so.

6. So far as the finding of joint possession by the contending parties in this case is concerned, the finding was arrived at by the Civil Court and as required by Section 146 (1-B), Code of Criminal Procedure, the learned District Magistrate proceeded

to dispose of the matter in conformity with that finding. It may also be noticed that under Section 146 (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. It would therefore appear that the finding cannot at all be challenged.

7. The questions for consideration then are whether, in the event of the contending parties being found in joint possession, a declaration can be made under Sub-section (6) of Section 145 to the effect that both the parties are entitled to possession until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction, and whether an order of attachment can be made.

8. In the order in Cr. R. C. 7 of 1962 referring the case to a Bench the learned Judge states as follows:

'It is contended on, behalf of the first party who challenged the correctness of the order of the learned Magistrate before the learned Sessions Judge that the appropriate order that has to be passed while accepting the reference is one under Section 146 Cr. P. C. while it is argued per contra on behalf of the second party that when once the Magistrate comes to the conclusion that both the parties are in joint possession of the properties, the proceedings should be dropped and the learned Magistrate was well within his rights to make such an order.

This reference raises an important point as to when once proceedings have been instituted under Section 145 Cr. P. C. and decision given by the Magistrate dropping the proceedings on the ground that both the parties are in joint possession of the properties whether resort is to be had to the provisions of Section 146 Cr. P. C. There seems to be conflict of opinion in this regard among the several High Courts. Sometimes the very same High Court has given contrary decisions. A brief reference to these cases will not be out of place. A bench decision of the Rajasthan High Court and which is the latest decision of that Court on the point is of Nahar Singh v. The State . It is held that where a Magistrate finds after enquiry that the parties were in joint and actual possession of the property in dispute, be should drop the proceedings started under Section 145 Cr. P. C. This

is the view taken by the Oudh High Court in the case of Mahamood Beg v. Ehasan Beg AIR 1941 Oudh 515; AIR 1948 Oudh 130 Gopinath Singh v. Emperor; The Nagpur High Court in the case of Sheoprasad Shriram v. Govindram Hardit Rai ; by the Patna High Court in the case of Nanda Kishore v. Kalika Misslr AIR 1923 Pat 546; by the Madras High Court in the case of Mahomed Khoolayappa v. Abdul Khadir AIR 1915 Mad 396 and in the case of Krishna Thevar v. State of Madras (1955) 2 Mad LJ 382.

A contrary view is taken in a later case of the Patna High Court in the case of Nandkeshwar Prasad Sahi v. Sita Saran Sahi AIR 1932 Pat 366 and other cases like Chiranjilal v. Mahadeo Prasad : AIR1932 All683 , Alagirisami Naidu v. Chinna Veerammal AIR 1949 Mad 461;. Rafiq v. Abdul Hakim : AIR1953 Ori278 .

The learned Advocates on either side submitthat there is no reported decision of our High Courtin this matter.

There is however 3 decision of the former High Court in the case of Narasing Bhan v. Lakshmi Bai 13 Mys LJ 357. That takes the view that when both the parties are in joint possession of the property in dispute, Section 145 Cr. P. C. does not apply and the Magistrate cannot keep such a property under attachment under Section 146 Cr. P. C. That decision takes the view simitar to Nahar Singh's case . Such a view appears to me to be opposed to the very intendment of the Cr. P. C. in enacting provisions like sections 145 and 146 Cr. P. C. in order to meet urgent situations where there is likelihood of breach of the peace. Dropping the proceedings like hot coal in a case of joint possession would not be a panacea to the ills which are sought to be effectively checked by the said provisions. This view I would have taken but for the fact of conflicting decisions on the point.

I came across an unreported decision of our High, Court in Cr. Revn. Petns. Nos. 365 and 402 of 1958 Venkataswamappa v. Ramappa, (Mys) where His Lordship Nittoor Sreenivasa Rau J. (as he then was) has observed as hereunder, in a case where the District Magistrate had held that there was joint possession of the property. After referring to the case of Nahar Singh of the Rajasthan High Court reported in and the opposite view taken by the Allahabad High Court in the case of AIR 1932 All 683, his lordship observed.

'The question is not free from difficulty. The object of proceedings under Section 145 of the Code o Criminal Procedure is to prevent a breach of the peace in the context of a dispute about possession of land. It is the dispute between two parties, each of them claiming exclusive possession that gives rise to an apprehension of a breach of the peace. If the court finds that they were in joint possession and in terms of Section 145 of the Code of Criminal Procedure upholds their right to be in joint possession, will such an order secure preservation of the peace when the two parties are opposed to each other? Even if action under Section 107 of the Code of Criminal Procedure is taken against both the parties would it solve the risk of being charged with a breach of the interim or final order, enter on the land? If so, who is to be in charge of the land? Would not these considerations indicate that in such a case action under Section 146 of the Code of Criminal Procedure would be appropriate? It is not however necessary in this case to go further into this question since it seems to me that the learned District Magistrate's finding of the joint possession cannot be sustained.' Differing from the view taken by the District Magistrate, His Lordship held that it was not a case of joint possession. How far the observations referred to above will serve as a precedent under such circumstances is a moot point.

9. In an unreported decision of our High Court in the case Chikka Boraiah v. Siddegowda, in Cri Revn. Petn. No. 224/6i (Mys) his Lordship Ahmed Ali Khan J. holds the view following the decision of the Rajasthan High Court in the case of Nahar Singh that where the Magistrate finds after enquiry that both the parties are in joint possession of the property in dispute, he should drop the proceedings under Section 145 Cr. P. C.

10. As frequently such cases of breach of the peace while the contending parties claim joint possession arise, in my view it is necessary that an authoritative ruling is called for. I therefore propose that the whole case be disposed of by a Bench of this Court. The records of this case be placed before His Lordship the Chief Justice for necessary orders in the matter.'

Several decisions have been referred to by the Counsel appearing for the opposing parties and by the learned Government Pleader and they be referred to.

11. In AIR 1915 Mad 396 it was held that when joint possession by both the contending parties is found no declaration under Section 145 Cr. P. C. can be made and that in such a case 'tile Magistrate has no jurisdiction to pass an order under Section 146 Cr. P. C. After referring to the argument that the actual possession contemplated under Section 145 (1) means exclusive possession and excludes joint possession and to the authorities taking that view and one of them which takes the contrary view, Seshagiri Aiyar J. observes;

'I am inclined to think that neither Section 145 nor Section 146 applies to cases of joint possession. The object aimed at by the legislature is the prevention of the breach of the peace. This can be secured by asking one of the parties to keep away from the property. But where both parties are in joint possession and are still prepared to commit a breach of the peace by trying to oust one another it will not be in the interests of preventive remedy that both should be maintained in possession. It may establish their rights to remain in status quo. It will certainly not help the Magistracy in maintaining order and peace. That I take to be the reason of the rule why Courts have declined to declare the joint possession of the contesting parties'.

12. In : AIR1932 All683 a contrary view was taken as to whether action under Section 146 Cr. P. C. could be taken in the case of joint possession, though it should be added that the Madras case does not appear to have been considered. The learned Judge observes:

'Do the words 'unable to satisfy himself as to which of them was in possession' cover the case of two joint owners both in joint possession or do they not? I consider that these words do cover that case and that if there are two joint owners in possession jointly, it is a case where the Magistrate cannot decide which of them was in exclusive possession. Learned counsel then argued that such a case of joint possession would not come under Ch. 12 at all or that the Court should take security under Section 107. Criminal Procedure Code. But the wording of Section 145 (1) is:

'that a dispute likely to cause a breach of the peace exists concerning any land'. The section does not define the land as being land in the possession of one party

or another but merely that it is land and that there is a dispute and that dispute is likely to cause a breach of the peace. All these elements exist In the present case where there is land and there is a dispute and the dispute is likely to cause a breach of the peace. The fact that the and is admittedly in joint possession of the parties merely in my opinion makes it unnecessary to produce evidence as to it being in the exclusive possession of one party, that is if it is admittedly in possession of both parties and it is on that account that the Magistrate has ordered a partition to be obtained from the Civil Court'.

It would appear that the learned judge was of the view that a finding of joint possession did not take the matter out of the purview of Section 145 Criminal Procedure Code.

13. In AIR 1932 Pat 366 it was held that the mete fact, that one set of persons claim exclusive possession over the major portion of it, while the other set of people claim to be in joint possession along with them of the entire land, does not make it the less a question of disputed actual possession than if each party claimed exclusive possession of the entire area and does not make Section 145 inapplicable. In other words 'the patting forward of a case of joint possession by one of the parties does not by itself prove joint possession. After the other party claims exclusive possession, obviously there is a dispute relating to possession of the property which can be dealt with, under Section 145 Cr. P. C. It is only when file joint possession is admitted by the parties or is found by the Court that the question may arise whether any further action can be taken under Section 145 Cr. P. C. This view was reaffirmed by the same Court in Zafar Ahsan v. Jageehwar Bux Roy AIR 1940 Pat 135 takes the same view. It is observed:

'The only other point raised is that Section 145 does not apply to a case of joint possession. It is true that when it has been found that the contesting parties are actually in joint possession no order should be made under Section 145. The position is different where one of the parties claims to have and is actually found to have exclusive possession adverse to the other party. The mere fact that theother party sets up a title to joint possession does not then tender Section 145 inapplicable'.

In AIR 1948 Oudh 130, it is held that Section 145 Cr. P. C. does not apply to cases of joint possession and it that section cannot be applied Section 146 Cr. P. C. also cannot be applied.

14. The case reported in is a decision of a Bench. One of the questions referred to it was; In case the Magistrate finds alter enquiry under Section 145 Cr. P. C. that the property in dispute was in joint possession of the parties then (a) what should be the mature of the Order if one could be passed under Section 145 Cr. P. C. or (b) should the Magistrate proceed to pass ma order under 'Section 146 Cr. P. C. The learned Judges observed:

'It is not necessary for us to quote authorities so far as the first part of the question is concerned far all the High Courts are agreed that where a court comes to the conclusion that the parties before it are in joint possession of the progeny in dispute on the date of the order no orderunder Section 145 in favour of any patty declaring him to be entitled to possession until evicted in the course of law forbidding all disturbances of such possession until such eviction, can be passed under Sub-section (6) of Section 145 Cr. P. C.

As regards the second point the learned Judges dissented from the view of Bennett J. in : AIR1932 All683 referred to above, namely, that the finding of joint possession amounts to his not being able to decide which of the patties was in exclusive possession and that therefore Section 146 applies to such a case. They held that that section did not apply to such a case. As stated by Mir Iqbal Hussain J,, in the order of reference in Cr. R. C. 7 of 1962, the view expressed in 13 Mys. LJ 357 is also to the same effect.

15. In (1955) 2 Mad LJ 382 it was held that where the proceedings under Section 145 Cr. P. C. are dropped in consequence of the contending parties being found in joint posession, Section 146 does not apply and an order attaching the subject matter of dispute and appointing a Receiver on the ground that likelihood of breach of the peace stilt continued was unsustainable.

16. In : AIR1953 Ori278 it was held that where the disputed property is found to be in joint possession and the apprehension of breach of the peace still continues, it

is open to the Court to direct attachment of the property under Section 146 Cr. P. C.

17. In Cr. E. P. 224 of 1961 (Mys) our learned brother Ahmed AH Khan J. held that when the Magistrate finds joint possession by both the contending parties, the proceedings under Section 145. Cr. P. C. should be dropped and that no order of attachment under Section 146 Cr. P. C. could be made.

18. In Cr. R. Ps. Nos. 365 and 402 of 1958 (Mys) which was decided by one of us and which has been referred to by Mir Iqbal Hussain J. in the order of reference, though certain observations were made bearing on the matter, no final view was expressed.

19. It would appear from the above summary of the views taken in the several decisions referred to above that there is general consensus of opinion that the mere putting forward of a case of joint possession by one party while the other party claims exclusive possession does not take the matter out of the purview of Section 145 Cr. P. C. There can hardly be any doubt about the correctness of this view since as long as there is a dispute relating to a land which is likely to cause a breach of the peace and the possibility of declaring one of the parties to be in actual possession, the requirements of Section 145 are satisfied. Otherwise all that one of the parties need do to secure the termination of the proceedings is to plead joint possession. This would defeat the object of Section 145 as a preventive measure against breach of the peace. The enquiry has to proceed until the Magistrate arrives at a finding whether one of the parties is in exclusive possession or both are in joint possession. In the former case he has to issue an order under Sub-section (6) declaring such party to be entitled to possession until evicted in due course of law and forbidding all disturbances of such possession.

20. If, he finds the parties to be in joint possession, the question is whether, even then he should make an order declaring that both the parties are in joint possession. On this question also the consensus of opinion appears to be that no such declaration can be made and the proceedings have to be dropped. The correctness of this view also is hardly open to doubt: Sub-section 6 of Section 145 Cr. P. C. reads as follows:

'If the Magistrate decides that one of the parties was (or should under the Second 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 disturbances of such possession, until such eviction (and when he proceeds under the second proviso) to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed).'

It will be noticed that what is contemplated by this provision is one of the parties being in 'such possession' i.e., such possession as is contemplated under Sub-section (1) namely, 'actual possession' of the subject of dispute. Some decisions have taken the view that 'actual possession' can only mean possession by one party and not joint possession. But, it is difficult to see how, if more persons than one is factually in possession, it can be said that their possession is not 'actual'. But even if 'joint possession' of both the parties is to be taken as 'actual posession' if such joint possession is found, that would not fulfil what is contemplated in Sub-section (6), namely one of the parties being in actual possession. It is only when one of the parties is found to be in actual possession that a declaration can be made. The reason for this is clear.

The object of Section 145 is to prevent breach of the peace in the context of the dispute brought before the Magistrate. The dispute is between the two parties who are found to be in joint possession. The declaration is to be accompanied by a direction forbidding, disturbance of the possession held by the party declared to be in possession. But the direction is intended to safeguard the possession of a party from disturbance by the contending party. Since each party is a contending party and each of them is found to be in possession, no direction can be given forbidding either party from disturbing the other person's possession. Consequently, even though the proceedings may be initiated under Section 145 and proceeded with in the context of one party claiming exclusive possession and the other party claiming joint possession, they have to be dropped once joint possession is found. It is no doubt true that in such a case, a finding of joint possession necessarily precedes the dropping of the proceedings, but the giving of such a finding is not the same thing as an order declaring both the parties to be

entitled to possession. For, such a declaration actually amounts to an injunction forbidding disturbance while a finding of joint possession will, as indicated above, lead to the dropping of the proceedings.

21. As regards the question whether when joint possession is found the Magistrate can attach the property under Section 146 all the decisions referred to above, except Cri Revn Petn. No. 224 of1961, (Mys) seem to deal with Sections 145 and 146before the amendment of the Code of CriminalProcedure by Act 26 of 1955. In Cri. Revn. Petns.Nos. 365 and 402 of 1958, (Mys) in which eventually an order attaching the property under Section 146 was made on the ground that the materialon record was 'not sufficient to satisfy the Courtas to which of the parties was in possession, suchan order was made as the proceedings had beeninstituted prior to the amending Act of 1955. Theamending Act introduces a radical change in regardto the scope and object of Section 146. As the Sectionstood previous to the amendment, the Magistratecould attach the subject of dispute until a competent Court had determined the rights of the parties thereto or the person entitled to possessionthereof, if the Magistrate came to the conclusionthat none of the parties was in actual, possession, atthe time of the preliminary order, or was unableto satisfy himself as to which of them was in actualpossession.

Under the amended section, the Magistrate to empowered in such a situation, namely, when he is of opinion that none of the parties was in actual possession at the time of the preliminary order or is unable to decide as to which of them was them in actual possession, to draw up a statement of the facts of the case and forward the records of the case to a civil Court of competent jurisdiction to decide the question of possession and to attach the property. But the reference to the civil Court is not for the purpose of a final determination of the rights of the parties to the subject of dispute or the right to its possession, but only for the limited purpose of giving a finding on the question of possession within the ambit of Section 145; in other words, as an auxiliary agency to the Magistrate. Indeed Sub-section (1-E) of Section 146 makes it clear that though under Sub-section (1-B) the Magistrate is bound to dispose of the proceeding under Section 145 in conformity with the finding of the civil Court, the Magistrate's order shall be subject to any subsequent decision of a Court of competent jurisdiction.

Hence any attachment that is made under Section 146 as amended can enure only until the Magistrate makes an order in conformity with the finding of the civil Court and not beyond. If the civil Court gives a finding that one of the contendingparties was in possession at the relevant date, theMagistrate has to declare such possession and noquestion of attachment arises. If the civil Courtfinds that both the parties have been in joint possession, then the Magistrate has to drop the proceedings and he has no jurisdiction to attach the property under Section 146 so as to be effective after hisfinal order. Hence no need arises to consider whichof the conflicting views found in the decisions referred to, namely, whether an order of attachmentcan be made even after the Magistrate finds jointpossession is the correct one.

22. Reference has been made in the course of the arguments to the observations made by one of us in Cri. Revn. Petns Nos. 365 and 402 of 7958 (Mys). Those observations are to be found extracted in Mir Iqbal Hussain, J.'s order of reference. Their purport is to indicate that the question is one of some difficulty and that the finding of joint possession and the consequent dropping of proceedings may not solve the problem of preservation of peace and that even resort to Section 144 or Section 107, Cri. P. C. will bring in its train the question who is to be in charge of the land, as presumably in such a case both parties would be forbidden from entering it. It is suggested that these considerations might indicate that in such a case action under Section 146 of the Code of Criminal Procedure would be appropriate. It may be noted That the proceedings under Section 145, Cri. P. C. in that case were instituted prior to the amending Act coming into operation and the Magistrate had power to direct attachment under Section 146. Further the observations were of a tentative character and no final view was expressed. We do not suggest that the difficulties do not still remain. But on a fuller consideration of the matter and in the light of what is stated above, we are of the view that no attachment can be effected and that the remedy, if any, however unsatisfactory it may be, has perhaps to be found in taking action under Section 107 or Section 144, Cri. P. C., if the parties, notwithstanding the finding that they are in joint possession fail either to come to an amicable arrangement or to resort to a civil Court for a final adjudication of their rights and continue to conduct themselves so as to be a menace to peace and order.

23. It has been mentioned above that Cr. R. P. 224/61 deals with proceedings under Section 145 instituted after the amending Act of 1955 came into operation. One of the contentions put forward was that in view of the amendment of Section 146 the Magistrate was not competent to pass an order under Section 146, Cri. P. C. Alter quoting Section 146 (1) as amended it is observed:

'It is clear under Sub-section (1) of Section 146, Cri. P.C., a Magistrate can attach the property in two cases: (i) 'when he finds that none of the parties before him was in such possession, and (2) when he is unable to decide which of the parties before him was in possession of the subject matter of the dispute. But when the Magistrate holds that both the parties are in joint possession, then it is not a case where he can decide as to which of them was in possession or none of them was in possession of the property. Consequently, the case does not come at all within the purview of Section 146 of the Criminal Procedure Code. It appears that the learned District Magistrate did not apply his mind on the provisions of Section 146 as it stood after the amendment of the Code. On the reasons stated above, I am of the opinion that the learned District Magistrate had no jurisdiction to pass an order of attachment under that Section.'

It will be noticed that the matter considered above would not be materially different even under Section 146 as it stood before amendment. But at the same time it has to be remembered that the attachment contemplated under the amended provision is in the contest, of referring the question of possession to the civil Court and this aspect of the matter has been dealt with above.

24. In this connection one of the contentions urged for the Petitioner may be dealt with. It is urged that the property in dispute exceeds in value the pecuniary jurisdiction of the Munsiff and that therefore the Munsiff, Kolar, was net a civil Court of competent jurisdiction to decide the question as required by Section 146 (1). This question has been dealt with in the case reported in : AIR1932 All683 . In that decision the learned Judge discussed the nature of the proceedings before the civil Court under Section 146 and comes to the conclusion that they are not civil proceedings, that the competency referred to under Section 146 (1) is with reference to territorial jurisdiction and that the conception of pecuniary jurisdiction

is foreign to the Criminal Procedure Code. We agree with respect with the reasoning and the conclusion arrived at. Hence there is no substance in this contention.

25. The last argument urged on behalf of the Petitioner is that even apart from attachment as contemplated under Section 146, the Magistrate has the power and the duty to make incidental and ancillary orders and that the property should have been attached in pursuance of such power. Reliance is placed upon the decision reported in Dasa Mahanty v. Gadadhar Samal : AIR1957 Ori92 . In that decision it is held that after dropping the proceedings under Section 145, Cri. P. C., the Magistrate does not become functus officio, that he has still jurisdiction to pass further orders of an ancillary nature in respect of the attached property and that if it is possible to determine the stains quanta the appropriate order would be to direct that the attached property should be restored to the possession of the party from whom it was taken and that if, however, the status quo ante could not be determined, the proper procedure would be to retain the property and its usufruct in the custody of the Court and direct the party concerned to approach the Civil Court to obtain possession of the same.

26. Emphasis is naturally laid upon the last part which would virtually amount to continuing the order of attachment. It is not clear from this decision whether the proceedings under Section 145 in that case were initiated before the amending Act came into operation or after. It appears very probable, however, that the proceedings commenced earlier. In any event it appears to us that when under the amended provision the Magistrate has no jurisdiction to keep the property in attachment after final orders are passed in the proceedings under Section 145, he cannot exercise substantially the same powers under the colour of making incidental orders. Such incidental or ancillary orders can only be with a view to tie up loose ends and bring, the proceedings to an end. Obviously that cannot mean that an order, which would be effective for an indefinite duration can be made.

27. The result is this revision petition is dismissed.

28. Petition dismissed.