

**Mohd. Yaqub Vs. Mohd. Raza**

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**SooperKanoon Citation :** [sooperkanoon.com/468700](http://sooperkanoon.com/468700)

**Court :** Allahabad

**Decided On :** Apr-03-1975

**Reported in :** 1975CriLJ1567

**Judge :** P.N. Bakshi, J.

**Appellant :** Mohd. Yaqub

**Respondent :** Mohd. Raza

**Judgement :**

ORDER

**P.N. Bakshi, J.**

1. The dispute in the present case centres round the crop on Chak No. 151 situate in village Malnapur which has already been harvested and kept in the Khalihan. It appears that while passing a preliminary order under Section 145, Cr. P. C. the Magistrate concerned attached; this crop which was lying in the Khalihan vide his order dated 21-4-1971.

2. Aggrieved thereby, a revision was filed before the Sessions Judge, Allahabad who has made the present recommendation for quashing the order of the Sub-Divisional Magistrate. Handia mentioned above.

3. I have heard learned Counsel for the parties and have also perused the impugned order. Admittedly, the crop which is alleged to have been sown on Chak No. 151 has been harvested earlier and has been placed in the Khalihan. The Sessions Judge was of the opinion that since the crop has already been cut and was lying in the Khalihan, therefore, the Magistrate had no jurisdiction to pass an order attaching the crop.

4. The counsel opposing this reference has brought to my notice a case reported in : AIR1948 All94 ; Gaya Prasad v. Emperor. In that case Hon'ble Malik, J. had held that Section 145, Cr. P. C. should be given a liberal interpretation, its object being to prevent as far as possible a breach of peace, and to enable the parties to settle their dispute as regards title in a civil court.

5. It is to be noted that in the aforesaid decision the tree which had been cut was still lying on the plot in dispute. It was in those circumstances that the Single Judge of this Court held that the tree still formed the bone of contention leading to an apprehension of breach of peace between the parties qua the land on which it was lying. The facts in the present case seem to be different. In the present case, the crop had already been cut away and had been placed in the Khalihan. If the Khalihan was situate on Chak No. 155 in that case, the decision cited above would apply to the facts of the case. But if the Khalihan is situate at a distance from the disputed plot in that case, the aforesaid decision will not apply. The crop having been cut already and having been placed in the Khalihan partakes the nature of movable property, and as such it would not be liable to attachment under Section 145, Cr. P. C. I would like to make it quite clear as already stated that if the crops still continue to lie in the Khalihan and the Khalihan is situate on Chak No. 155 in dispute in that case, the presence of the crop on the disputed land could lead to an apprehension of breach of peace between the parties, and in that view of the matter the liberal interpretation which has been put by a learned Single Judge of this Court may be applicable.

6. In deciding this question however, I would like to emphasise that under Section 145(2), Cr. P. C. land or water includes 'crops' or other produce of the land and the rent or profits of any such land. Prima facie, it would appear that within the

definition of the word 'land' crops would be included under all circumstances but that does not seem to be a reasonable interpretation of the expression 'land' as embodied in Sub-section (2) of the Section 145, Cr. P. C. One cannot lose sight of the fact that the main object of Section 145, Cr. P. C. is to prevent a breach of peace with respect to land or immovable property. If a crop is attached to the land, it would be immovable property and would be covered by Section 145(2), Cr. P. C. Further, if the crop is cut and kept on the land in dispute and that is likely to lead to an apprehension of breach of peace, it would still be covered under the expression crop or other produce of the Land and would be liable to attachment. But if the crop has already been severed and has been removed away from the disputed land to the Khalihan in that case, such a crop would not be covered by the expression 'land' as laid down in Section 145(2), Cr. P. C. It would then assume the character of movable property which cannot form the subject-matter of attachment under Section 145, Cr. P. C.

7. In view of what I have observed above, I am of opinion that it would be in the interest of justice to remand the case and to direct the trial court to allow the parties to lead evidence on the question as to where this Khalihan is situate. If after enquiry by the Magistrate he comes to the conclusion that the Khalihan is situate on the chak in dispute, in that case he would have jurisdiction to attach the crops, otherwise such an order cannot be legally passed.

8. This reference is therefore, accepted to this limited extent that while the impugned order of the Magistrate dated 21-4-1971 attaching the crop in the Khalihan under Section 145, Cr. P. C. is set aside, the Magistrate is directed to allow the parties an opportunity to lead evidence on the question as to where the Khalihan is situate. Thereafter in the light of the observations made by me above, he shall pass appropriate orders in accordance with law.

9. Let the record of the case be sent back to the court below at once to enable a speedy disposal of the case.