

**Nathi Vs. Patori and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/760389](http://sooperkanoon.com/760389)

**Court :** Rajasthan

**Decided On :** Jul-06-1981

**Reported in :** 1981WLN250

**Judge :** K.D. Sharma, C.J.

**Appeal No. :** S.B. Criminal Revision No. 157/1977

**Appellant :** Nathi

**Respondent :** Patori and anr.

**Disposition :** Petition dismissed

**Judgement :**

K.D. Sharma, C.J.

1. This is an application in revision against an order of the Sessions Judge, Bharatpur, dated June 20, 1977 by which the order passed by the Executive Magistrate, Bayana, dated April 11, 1977, ordering attachment of the agricultural land was set aside.

2. The short facts giving rise to this revision application may be briefly narrated as follows. Proceedings under Section 145, Cr. P.C. were initiated against Patori non-applicant by the Executive Magistrate, Bayana, on an application made by Nathi, applicant in respect of agricultural lands situated in village Barah Mashi Tehsil

Roopwas measuring 5 Bighas and 3 Biswas. The Executive Magistrate, however, did not draw any preliminary order but called upon the non-applicant Patori to appear in his court on April 5, 1977, as is evident from the certified copy of his order dated March 28, 1977, which reads as follows .--(HINDI)

Patori, non-applicant put in his appearance in response to the notice issued to him and contested the application of Nathi. The Executive Magistrate, thereupon, perused the record, heard arguments advanced by the learned Counsel for the parties and came to a conclusion on April 11, 1977, that although the dispute between the parties was of a civil nature, but as the dispute related to agricultural lands, the land in dispute should be attached. So he passed an order of attachment of the land under controversy and appointed the Tehsildar, Roopwas, as receiver thereof. Aggrieved by this order, Patori, non-applicant filed a revision application in the court of the Sessions Judge, Bharatpur, who, by his order dated June 20, 1977, accepted the revision application and set aside the order of attachment on the ground that no case for attachment of the land in dispute was made out under Section 146, Cr.P.C. As against this order of the learned Sessions Judge, Nathi has moved this Court in revision.

3. I have carefully perused the record and heard Mr. D.K. Soral, learned Counsel for Nathi, applicant, Mr. Amar Singh Chaturvedi, Advocate, appearing on behalf of the non-applicant and the public prosecutor for the State. From a bare perusal of the order of the learned Sessions Judge, Bharatpur, dated June 20, 1977, it is evident that the Executive Magistrate did not make any order under Sub-Section (1) of Section 146, Cr. P.C. because no preliminary order was drawn by him after having satisfied himself that there was a dispute between the parties likely to cause breach of the peace concerning the land in question. In his order dated March 27, 1977, which has been quoted above in extenso, he clearly stated that there was no reliable proof of likelihood of breach of the peace. Hence, in these circumstances, the Executive Magistrate was not justified in proceeding under Section 146, Cr. P.C. because proceedings under Section 246, Cr. P.C. are in continuation of those under Section 145, Cr. P.C. The opening words of Section 146, Cr. P.C. 'If the Magistrate at any time after making the order under Sub-section (1) of Section 145' clearly show that an order of a Magistrate under Section

146, Cr. P.C. is illegal without first making the order under Sub-section (1) of Section 145, Cr. P.C.

4. Apart from this, the learned Sessions Judge rightly observed that the attachment order under Section 146, Cr. P.C. could only be passed if the Magistrate considered the case to be one of emergency or if he decided that none of the parties was then in such possession as is referred to in Section 145, Cr. P.C. or if he was unable to satisfy himself as to which of them was in such possession of the subject of dispute. In the present case none of the conditions mentioned above existed at the time when the order of attachment of the land was passed by the learned Executive Magistrate, Bayana. In his order dated April 11, 1977, the Executive Magistrate nowhere stated that the case was one of emergency or that after inquiry he was unable to satisfy himself as to which of the parties was then in possession of the subject of dispute. The Executive Magistrate did not give any decision also that none of the parties was then in such possession as is referred to in Section 145, Cr. P.C.

5. Consequently, I find no force in this revision application because there is no substantial ground for interference with the order of the learned Sessions Judge, Bharatpur. The revision application is, therefore, dismissed.