

**Mani Ram and ors. Vs. the State of Rajasthan and anr.**

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**Court :** Rajasthan

**Decided On :** Apr-11-1985

**Reported in :** 1985WLN(UC)52

**Judge :** K.S. Lodha, J.

**Appeal No. :** S.B. Criminal Revision No. 369 of 1984

**Appellant :** Mani Ram and ors.

**Respondent :** The State of Rajasthan and anr.

**Disposition :** Petition allowed

**Judgement :**

**K.S. Lodha, J.**

1. This matter relates to proceedings under Sections 145 and 146 Cr. PC and arises under the following circumstances. On 2-5-83 the SHO, Hanumangarh Town filed a complaint stating that there was dispute about possession of the land described in that complaint between Kumari Dropdi the alleged adopted daughter of deceased Rekha Ram on the one hand and Mani Ram & others who claim the land in dispute under a will from the deceased Rekha Ram and there was apprehension of breach of peace on that account. On this report, the learned Executive Magistrate, Hanumangarh, drew a preliminary order Under Section 145

Cr. PC on 4-6-83 and also directed the attachment of the land Under Section 146 Cr. PC. He appointed the Tehsildar (Revenue), Hanumangarh, to be the receiver on this property. On 11-5-83, the learned Magistrate after hearing both the parties dropped the proceedings by recourse to Section 145(5) Cr. PC. However, on a revision filed by Kumari Dropdi said order was set aside by the learned Addl. Sessions Judge, Hanumangarh, by his order dated 8-8-83 and he directed the proceedings to continue. The proceedings were then continued and by his order dt. 27-1-84, the learned Magistrate declared the possession of Mani Ram and others on the date of the preliminary order and within two months preceding it. He further directed that the order of attachment of the land is withdrawn and the receiver will hand over possession to Mani Ram and others. Aggrieved of this, Kumari Dropdi went up in revision before the learned Addl. Sessions Judge No. 1, Hanumangarh Only one contention was raised before the learned Sessions Judge and that was that even through the learned Magistrate could have continued the after the attachment of the land Under Section 146(1) Cr.PC, he could not have withdrawn the order of attachment and direct the receiver to hand over possession to Mani Ram and others because attachment made Under Section 146 Cr.PC on the ground of emergency was to continue even after the declaration of the possession of any of the parties Under Section 145(4) till the rights of the parties are finally determined by a competent court. This argument found favour with the learned Addl. Sessions Judge and he while accepting the revision set aside the order of the Executive Magistrate withdrawing the attachment and directed that the Magistrate will take back the possession from Mani Ram and others and would keep the land in dispute under attachment and under the receivership of the Tehsildar till the rights of the parties are decided by a civil court or another receiver is appointed by the civil court. Aggrieved of this Mani Ram and others have come up in revision.

2. I have heard the learned counsel for the parties and have gone through the record. Although the matter is at admission stage, since the record had already been received and the parties are prepared to argue it out the revision is being finally disposed of at this stage.

3. The learned counsel for the petitioners urged that the view taken by the learned Magistrate is entirely wrong and the order passed by him is contrary to the view taken by the Hon'ble Supreme Court in Mathuralal v. Bhanwarlal : 1980 CriLJ1 and : AIR 1985 SC472 . On the other hand, the learned counsel for non-petitioner No. 2 vehemently supported the order of the learned Addl. Sessions Judge and urged that even though the possession of the present petitioners had been declared by the learned Magistrate, the attachment could not have been withdrawn unless the Magistrate found that there was no longer any likelihood of breach of peace with regard to the land in dispute or till rights of the parties are finally decided by a competent court. In support of his contention, he placed reliance upon Mansukh Ram v. State 1977 Cri.LJ 563 and Umrao v. State of Rajasthan 1976 Raj. Cri. Cases 94. It was also contended by the learned counsel for the petitioners that before the initiation of the proceedings under Section 145 Cr PC the non-petitioner No. 2 Kumari Dropdi had already filed a suit before the revenue court for declaration of her rights in respect of the land in dispute and had applied for the appointment of a receiver but that application had been rejected. He further pointed out that in that suit the present petitioners had moved an application Under Section 212 of the Rajasthan Tenancy Act and the re-upon an injunction had been issued against the plaintiff Kumari Dropdi not to interfere with the possession of the present petitioners on the land in dispute and, in the case of these facts, i e. when a competent court was seized of the matter, the recourse to proceedings Under Section 145 was not proper and now when the learned Magistrate has already declared the possession of the present petitioners, the learned Addl. Sessions Judge was not at all justified in directing the re-attachment of the property in view of his interpretation of Section 146 Cr.PC.

4. The learned counsel for non petitioner No. 2 had not refuted the statement of fact about the filing of the suit by Kumari Dropdi, the dismissal of her application for appointment of receiver in that suit and the grant of temporary injunction in favour of the present petitioners and against the non petitioner No. 2. He however urged that despite the pendency of the revenue suit, the proceedings Under Sections 145 & 146 Cr. PC could continue as there was apprehension of breach of peace & the matter had not finally been determined by a competent court so far as the rights of the parties are concerned.

5. I have given my careful consideration to the rival contentions, and it may at once be stated that the interpretation put by the learned Addl. Sessions Judge of Section 146 Cr.PC cannot be upheld in view of the clear decision of their Lordships of the Supreme Court in Mathuralal's case (supra). Their Lordships had clearly opined that attachment Under Section 146(1) would come to an end as soon as the possession of a party is declared Under Section 145. Their Lordships further observed after observing that changes in the provisions of Sections 145 and 146 had been introduced the words 'pending his decision under this Section' have apparently been omitted as unnecessary since Section 145 provides how the proceeding initiated by a preliminary order must proceed and, therefore, an attachment made 'at any time after making the order Under Section 145(1)' can only continue until the termination of the proceeding. At the termination of the proceeding, if he finds one of the parties was in-possession as stipulated, the Magistrate must make an order as provided in Section 146(6) & withdraw the attachment as provided in Section 146(1) since there can be no dispute likely to cause a breach of the peace once an order in terms of Section 145(6) is made. Therefore, there is absolutely no doubt that even after the attachment Under Section 145 on the ground of emergency, the Executive Magistrate can proceed with the enquiry Under Section 145 and on its conclusion, he may declare any of the parties to be in possession as a result of such enquiry and on such declaration, the attachment has to be withdrawn. When the attachment is thus withdrawn, the receiver would automatically cease to be in possession of the land in dispute and the land would be restored to the party whose possession has been declared Under Section 145 Cr. PC,

6. The learned counsel for non-petitioner No. 2, however, wanted to distinguish this authority on two grounds. In the first place he referred to an authority of this Court reported in Mansukh Ram's case (supra) and Umrao's case (supra) and urged that before the introduction of the present Section 146 as it now stands, the attachment on the ground of emergency could be made under Section 145(4) proviso 3 of the old Code during the pendency of the proceedings Under Section 145 and, therefore, when an attachment is to be made now Under Section 146 on ground of emergency, it can be terminated only in the ways provided Under Section 146 namely, when the rights are determined by a competent court or

under the proviso to Section 146, the Magistrate finds that there is no longer any likelihood of the breach of the peace. All that I may say is that the view taken by this Court in Mansukh Ram's case(supra)which in its term relied on Umrao's case(supra) has not found favour with the Hon'ble Supreme Court and in view of the clear decision of Hon'ble Supreme Court as referred to above in Mathuralal's case (supra), the attachment Under Section 146 as it now stands must also come to an end as soon as a declaration is made Under Section 145(4) and (6), Therefore, this contention cannot be accepted. The other ground on which the learned counsel wanted to distinguish this authority was that the observation of the Hon'ble Supreme Court that there can be no dispute likely to cause breach of the peace once an order in terms of Section 145(6) is made is only an expectation to the effect that when a declaration Under Section 145(6) is made, no breach of the peace would take place but it does not mean that once a declaration Under Section 145(6) is made, the attachment will have to be set aside or withdrawn because there cannot be any breach of the peace after such declaration. I am sorry, this amounts to a wrong reading of the observations of the Hon'ble Supreme Court. In my opinion, the only inference which can be drawn from these observations is that once a declaration Under Section 145(6) is made, the question of continuance of any dispute likely to cause breach of the peace cannot subsist and, therefore, the very expediency for the continuance of the attachment Under Section 146 disappears. I am, therefore, clearly of the opinion that the learned Addl. Sessions Judge was not correct in re-directing the attachment even after the declaration Under Section 145(4) and (6) Cr. PC.

7. The other contention also cannot be said to be without substance in as much as when the non-petitioner No. 2 had already approached the revenue court for the declaration of her rights and failed to obtain a receiver and on the other hand, the present petitioner have got a temporary injunction in their favour, the recourse to the proceedings Under Section 145 by Kumari Dropdi cannot be said to be appropriate. Reference in this connection may be made to AIR 1985 SC 472, The contention of the learned counsel for non-petitioner No. 2 that even after recourse to proceedings before a competent court for declaration of the rights an application under Section 145 Cr.PC is maintainable and the support taken by him from the authority of this Court in Rama Kishan v. Daulat Rai 1978 (Raj) Cr. Cases 382

cannot be accepted in view of the Hon'ble Supreme Court decision referred to above.

8. For the reason stated, this revision is accepted and the order of the learned Addl. Sessions Judge No. 1, Hanumangarh dated 21-9-84 is set aside.

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