
Code Of Criminal Procedure (Maharashtra Amendment) Act, 1977

1 of 1978

[13 January 1978]

CONTENTS

1. Short Title And Commencement
2. Amendment Of Section 145 Of Act 2 Of 1974
3. Amendment Of Section 147 Of Act 1 Of 1978
4. Amendment Of Section 478 Of Act 1 Of 1978
5. Saving Of Proceedings Pending Before Executive Magistrates In Greater Bombay Under Sections 145 To 147 Of Act 2 Of 1974

Code Of Criminal Procedure (Maharashtra Amendment) Act, 1977

1 of 1978

[13 January 1978]

An Act further to amend the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra. WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra, for the purposes hereinafter appearing; It is hereby enacted in the Twenty-eighth Year of the Republic of India as follows :- * For Statement of Objects and Reasons, see Maharashtra Government Gazette, 1977, Pt. V. p. 360.

1. Short Title And Commencement :-

- (1) This Act may be called the Code of Criminal Procedure (Maharashtra Amendment) Act, 1977.
- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Amendment Of Section 145 Of Act 2 Of 1974 :-

In section 145 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra (hereinafter referred to as

"the said Code") :-

(a) in sub-section (1) for the words "Whenever an Executive Magistrate" the words "Whenever in Greater Bombay, a Metropolitan Magistrate and elsewhere In the State, an Executive Magistrate" shall be substituted;

(b) for sub-section (10), the following sub-section shall be substituted, namely :-

"(10) In the case of an Executive Magistrate taking action under this section nothing in this section shall be deemed to be in derogation of his power to proceed under section 107.

In the case of a Metropolitan Magistrate taking action under this section, if at any stage of the proceeding, he is of the opinion that the dispute calls for an action under section 107, he shall, after recording his reasons, forward the necessary information to the Executive Magistrate having jurisdiction to enable him to proceed under that section."

NOTES

Under the old Code. Code of Criminal Procedure of 1898, in Greater Bombay powers relating to disputes as to the immoveable property were given to the Chief Presidency Magistrates and any other Presidency Magistrate especially empowered for this purpose and these powers were exercised by the Executive Magistrate in District level. But under the new Code of 1896, the powers were given under sections 145 to 148 to the Executive Magistrates throughout the State.

Government decided to entrust this work to the Metropolitan, or Judicial Magistrates in Greater Bombay only as before and in the remaining areas of the State, the work may be continued to be done by the Executive Magistrates as hereinbefore. (S. 145(1). (10); 147(1) and 478 and Ss. 145. 146. 147 amended).

(a) Under the section of the new Code, this new amendment vests the power to intervene in all disputes of the nature mentioned in the section.

(b) The requirement of putting in documents and affidavits as contained in old sub-section (1) of the old Code has been done away with. And the old procedure before Amendment of 1955 was restored e.g., parties are to submit written statements of their claims as respects the fact of actual possession of the subject of the dispute, and Magistrate to record all evidence, oral and documentary, while conducting enquiry.

Starting point for computation of two months.-

The starting point of the computation of dispute of the category

mentioned in section 145. is the date of the receipt of the report from the police officer or information received by the Magistrate. The publication of final order as mentioned in the section is necessary.

"There is no question of any eviction under the Act in proceedings under section 145 of the Criminal Procedure Code, They are not in respect of any order made or to be made under the Act. Proceedings under this section are for the purpose of preventing breach of peace. What the Executive Magistrate is required to do is to find out who was in possession on the date or two months prior to the drawing of preliminary order. He does not decide any question of title; nor does he decide who should be evicted and who should be entitled to possession under the Maharashtra Vacant Lands Act. -Ramchandra Prabhu v. Atmaram Copal Gaikwad. 1978 Mah. L. J. 141.

While considering, whether the affidavits filed by each party or documentary evidence shall form basis of decision on the application filed under section 145, it was held that no case is made out of interference with the order passed by the Learned Magistrate. Since the suit has already been filed by respondent No. 1, it is open to applicant to move the Court for expeditious disposal of suits.- Madhavlal Narayanlal Chaturvedi and others, 1976 U. R. C. (Bom.) 36.

Magistrate is no longer competent to decide a case only on the basis of affidavits under the section.- Flori Rodrigues & Maxie Jureme Danial Cubrai, 1978 Mah. L. J. 627.

"There is no power to order restoration of possession except in cases referred to in the proviso to sub-section (4) of section 145. The Magistrate has therefore, no jurisdiction to pass an order for restoration of possession to a party at the time of passing the preliminary order made on an application of party who is admittedly not in possession at the time of application.- Kishore Chandra Mishrilal v. R. B. Ghumkar, 1976 Mah. L. J. Note. No. 1.

The Magistrate must respect the findings recorded by the Civil Court with respect to the question of possession,- Yeshwant Ganpat Khot v. Smt. Anusayabai Anna Khot, (1980) 2 Mah. L. R. 10.

For Jurisdiction of E. M. in entertaining the application under section 145.- A. K. Roy v. S. M. Thakkar, 1976 U. R. C. Bom. 376.

When the order passed by the Magistrate is backed by the facts, the order is legal and there can be no error of law. Ramnarayan Sadashiv Pande v. Galendra Singh Govind Singh, 1978 U. R. C. (Bom.) 285.

Magistrates who are exercising jurisdiction under this section must always take care to take note of orders passed by the Civil Court and must regard them so far as they are consistent with their duties under this section.- Yeshwant Khot v. Smt. Anusayabai, (1980) 2 Mah. L. R. 10.

Possession of the disputed land must be proved.- Wali Mohamed v. Mohamed Shabir, (1980) 2 Mah. L. R. 255 (Bom.).

Unless emergency of situation is made out. order of attachment is bad in law.- Vinayakrao v. Dr. Ambadas Rao, 1982 Mah. L. R. 20.

Whether, order of attachment and sealing of disputed premises is interlocutory order. - Ramzanali Shahabuddin Shaikh v. Nasimkhan Maushi Khan, 1978, U. R. C. (Bom.) 406.

An essential ingredient in passing of preliminary order is that the dispute must be related to dispossession within two months prior to passing of preliminary order.- P. K. Antia v. Shridhan Sadashiv Katdare, 1982 Mah. L. J. 14; Krishna Kamini v. Abdul Jubbar, (1903) I. L. R. 30; Parmessar Singh v. Kailaspati, AIR 1916 Pat. 292; M. P. State v. Premlal, 1957 Nag. 27, 1856 Nag. L. J. 766; Sitanath Shan Bhowmic v. A. Harvey, AIR 1921 Cal. 553; Amrital N. Shah v. Nageshwar Rao, AIR 1947 Mad. 133.

The High Court can exercise its discretion If the facts alleged in the complaint do not make out an offence.- Mrs. Sulochana v. Rama Rao, 1981 Bom. C. R. 242.

A party cannot contend that by his action he will create an emergency or an emergency will be created and, therefore, order under section 146(1) should be passed.- Sridhar Katdare v. Dr. P. K. Antia, (1983) 14 L. C. 485 : (1983) Bom. C. R. 5.

The proceedings are binding not only on parties but to all those concerned with the dispute. Cadglin A. DSouza v. Hart Chandrai v. Sangtani, (1983) Bom. C. R. 313.

When a third party claiming right to possess or interest arising after passing of preliminary order under this section cannot be allowed to assert. such a right or resist enforcement of order. Dossa Harjee v. Bijay Kumar. 1984 Mah. L. J. 99.

In a pendency of civil suit, such pendency does not in any way affect jurisdiction of Magistrate under sections 145 & 146. Sarbhansingh N. Keer v. Hussain Khan Kandarnawaz Khan, 1986 Mah. L. J. 386.

If the procedure laid down in sub-sections (1) and (4) of section 145 is not followed strictly, the order of restoration of possession can be set aside. Champaklal Sumermal Khimavalv. Rupchand S. Jain, 1976 U. R. C. (Bom.) 400.

Whether order for sealing the premises in question till the decision of the Court under section 145 is interlocutory order. *Ramadhan Jhirce Sharma v. R. D. Ghumkar*, EM., 1976 U. R. C. (Bom.) 156.

The orders passed by E. M. are subject to the orders passed by the Civil Court. *Vasant Bhau Pawar v. Anant Bhau Pawar*, (1978) 2 Mah. L. R. 195.

Raghunath Kusabd Chavan v. Dattatraya Keshavrao Chavan, 1980 Bom. C. R. 897 : 1981 (2) Mah. L. J. 14.

Under this section, Magistrate has no power to transfer the cases to the Civil Court for adjudication of their title. *M. B. Yadhav v. V. N. Bhadre*, 1980 Cri. L. C. 367 (Bom.),

Magistrate does not become *functus officio* on passing an attachment order under section 146(1). *Dhondiba v. Sandu*. 1979 Bom. Cri. 101(104) : (1980) 2 Mah. L. R. 39.

The provision in sub-clause (4) of section 145 and section 146 are mandatory. The omission to observe them vitiates the entire proceedings as they are prerequisites for institution of proceedings under section 145 of Cr. PC. *Laxman Bhikaji v. Bahimkhan Dalwai*, 1978 U.R.C. (Bom.) 674.

The Magistrate must be satisfied as one of the alternatives viz., that an emergency exists, to pass order under section 146 without any lapse of time.- *Mrs. Sulochana Bhandari v. K. Rama*. 1981 M. L. R. 91.

When two different orders were passed by the Sessions Court and correspondingly different orders by the E. M., held that the entire proceedings should be quashed and the matter was sent back to E. M. to start an enquiry afresh on giving sufficient notice to the parties and to decide whether attachment under section 146 is essential and Justified by the material on record. *Maruti v. Bhaurao*, 1982 Mah. L. R. 111.

For sealing the premises on the ground of emergency. *Smt. Sayyad Munira Begum Kadri v. Mathew Abraham*, 1976 U. R. C. (Bom.) 550.

Emergency need not be existed on the date of the preliminary order but also continued at the time of the passing of the final order under section 146. *Khalil-ur-Rehman v. Zafar Abid*, 1982 M. L. R. 342 (Bom.).

3. Amendment Of Section 147 Of Act 1 Of 1978 :-

In section 147 of the said Code, in sub-section (1), for the words "Whenever an Executive Magistrate" the words "Whenever in

Greater Bombay, a Metropolitan Magistrate and elsewhere in the State, an Executive Magistrate" shall be substituted.

4. Amendment Of Section 478 Of Act 1 Of 1978 :-

In section 478 of the said Code, in clause (b), for the words "to an Executive Magistrate shall be construed" the words "to an Executive Magistrate in the areas of the State outside Greater Bombay shall be construed" shall be substituted.

5. Saving Of Proceedings Pending Before Executive Magistrates In Greater Bombay Under Sections 145 To 147 Of Act 2 Of 1974 :-

If any proceedings under sections 145, 146 or 147 of the said Code are pending before any Executive Magistrate in Greater Bombay on the day immediately preceding the date of commencement of this Act, they shall be continued, heard and disposed of by that Magistrate, as if this Act had not been passed.