

## Jagannath Singh Chauhan and Another Vs Smt. Shakuntala Singh

**Court:** Allahabad High Court (Lucknow Bench)

**Date of Decision:** April 26, 1989

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 145(1), 146(2), 397, 397(2), 401

**Citation:** (1990) 14 ACR 59

**Hon'ble Judges:** Virendra Kumar, J

**Bench:** Single Bench

**Advocate:** R.K. Singh, for the Appellant; Suresh Chandra and Anoop Kumar, for the Respondent

**Final Decision:** Dismissed

### Judgement

Virendra Kumar, J.

The revisionists through the above said revision petition have challenged the preliminary order passed u/s 145(1) Code

of Criminal Procedure dated 7-11-83 contained in Annexure-5 as well as the interim order dated 8-11-83 passed u/s 146(1) Code of Criminal

Procedure .

2. Learned Counsel for the revisionists has very clearly stated that since the specific provisions of Section 397 & 401 Code of Criminal Procedure

are applicable he is pressing this petition under these specific provisions, namely, u/s 397/401 Code of Criminal Procedure and it is to be treated

as revision petition only.

3. The dispute before the City Magistrate, Rae Bareli was in respect of the house situated in plot No. 11 in the city of Rae Bareli. The said house

belonged to Raja Shiv Narain Singh and thereafter it devolved on his wife Smt. Rani Sujan Kunwar According to the revisionists by virtue of sale

deed dated 14-6-82 they purchased this property. Thereafter, mutation was ordered in their favour on 4-9-83 and they had come into possession.

According to the Opposite Party the property in question was given on rent to the Ladies Club at Rae Bareli in 1934 and since then the Club

continued to be in possession of the same. Opposite Party Smt. Shakuntala Singh has come forward as the Secretary of the Ladies Club, Rae

Bareli. She has been impleaded as such in these proceedings by the revisionists.

4. On 7-11-83 Opposite Party moved an application to this effect that on 8-3-83, revisionists with the help of certain other persons entered into

the property of the Club at about 11 A.M., threatened the Chaukidar, broke open the locks of certain rooms and almirahs, demolished the

boundary and forcibly removed certain articles from the premises. It was requested that the revisionists wanted to take forcible possession of the

building and there was serious apprehension of breach of peace and therefore, it was pressed that arrangement may be made for safeguarding the

possession of the Club.

5. A report was called for by the City Magistrate, Rae Bareilly. The police gave its report dated 7-11-83 contained in Annexure No. 4. It was to

this effect that there was dispute about the possession, the revisionists asserted their possession, wanted to stop the ladies from entering into the

Club and there was apprehension of breach of peace. According to the Petitioners themselves, on 8-11-83 a complaint was moved by the

Opposite Party before the District Magistrate Rae Bareilly in respect of the dispute regarding the same property. The City Magistrate to whom it

was forwarded for necessary action, called for police report on 8-11-83. On the same date the police submitted the report reiterating that there

was apprehension of breach of peace so far as the parties were concerned. On the same date, that is, 8-11-83 two witnesses Badri and Habib

were also examined in connection with the dispute and apprehension of breach of peace, revisionists have challenged the report of the police as

well as the statement of the witnesses Badri and Habib. On 7-11-83 the City Magistrate on being satisfied that a dispute likely to cause breach of

peace existed concerning the building situated in Plot No. II, passed preliminary order u/s 145(1) Code of Criminal Procedure contained in

Annexure-5. Both the p S. T. S. T. S. T. es were ordered to file their written statements by 11-11-83. Thereafter on 8-11-83 the City Magistrate

Rae Bareilly passed another order which was u/s 146(1) Code of Criminal Procedure contained in Annexure-6. It mentions inter alia that after

looking into the police report dated 8-11-83 as well as the statement of the witnesses (referred to above), he was satisfied that there existed

emergency in respect of the disputed property and therefore, it was necessary to pass order for attachment in respect of the same property u/s

146(1) Code of Criminal Procedure. Accordingly, order for attachment of the property in dispute was passed by the Magistrate on 8-11-83

contained in Annexure-6.

6. As already mentioned, Learned Counsel for the revisionists has assailed both the orders, namely, order u/s 145(1) Code of Criminal Procedure

for drawing the proceedings as well as u/s 146(1) Code of Criminal Procedure for interim attachment.

7. First of all preliminary order passed u/s 145(1) Code of Criminal Procedure is being taken up. Section 145(1) Code of Criminal Procedure is

reproduced below :

145. Procedure where dispute concerning land or water is likely to cause breach of peace -- (1) Wherever an Executive Magistrate is satisfied

from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water

or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring

the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of

their respective claims as respects the facts of actual possession of the subject of dispute.

It is absolutely clear that in a case the Magistrate is satisfied from [the police report or other information that a dispute likely to cause a breach of the

peace exists concerning any immovable property, he is authorised to pass an order in writing stating grounds for his being so satisfied and requiring

the parties concerned to the dispute to attend his court and file written statement so that he may, make inquiry into the fact of actual possession of

the such property. In the instant case, there was available before the Magistrate such material (which has been referred to above) on the basis of

which he was quite justified in arriving at the satisfaction that there existed a dispute relating to the possession of the property in question between

the parties and also that apprehension of breach of peace existed. The order passed u/s 145(1) Code of Criminal Procedure complies with the

requirements of the said section.

8. Learned Counsel for the revisionists has  $\tilde{A} \hat{A} \frac{1}{2}$  challenged this order on the ground that question of possession has already been settled by the

competent court inasmuch as the court of Tehsildar which has decided the mutation matter in respect of the property in question, has already

ordered for mutation of the name of the revisionists in respect of the property in question. In this connection, Learned Counsel for the revisionists

has relied upon on the case of Vinai Kumar v. Om Prakash 1980 ACR 4. Reliance has been placed on the following paragraph of this ruling :

The words of S. 146(1) of the new Code are also very significant. They say that the attachment order shall continue until a competent Court has

determined the rights of the parties thereto with regard to the person entitled to possession thereof. The word  $\tilde{A} \hat{A} \frac{1}{2}$  thereto  $\tilde{A} \hat{A} \frac{1}{2}$  refers to the property

or subject in dispute. The decision of the competent Court has to be with regard to the person entitled to possession thereof. There can be no

manner of doubt that a mutation court is fully competent to decide- as to who is entitled to the possession of the property. Therefore, it is

competent Court for purpose of Section 146(1) of the Code. The view taken by the learned Sessions Judge was obviously wrong.

9. In the instant case there has been filed, though subsequently in the year 1984, an appeal against the order of mutation. Counter affidavit filed

from the side of the opposite party goes to show that a stay order has already been passed by the appellate court. It may be mentioned here that

so far this affirmation of the opposite party is concerned, there is no specific denial from the side of the revisionists. Learned Counsel for the

revisionists contended that the appeal was time barred. However, it seems to be a fact that the order of mutation has been stayed in that appeal.

Further, it is contended that the filing of appeal is a continuance of the proceedings. This point does not make any change in view of the fact that

what has been passed, is stay order staying the order of mutation passed by Tehsildar. Moreover, the decision of the Single Judge, in the above

cited case that on the basis of the order for mutation the possession of the party in whose favour mutation is ordered, get established, does not

seem to have considered all relevant points and law. No provision of the relevant law like Revenue Act has been referred to in this Ruling. What is

the implication and import of mutation has also not been discussed in the Ruling. Further, it is very doubtful to say that on account of the order for

mutation, the Magistrate proceeding u/s 145(1) Code of Criminal Procedure has become incompetent to inquire into and determine the question

of actual possession at the relevant time. It is well established that power of decision on a claim for possession in respect of the immovable

property in question lies within the jurisdiction of Civil Court. It is also urged from the side of opposite party that there existed a registered rent

note (brought on record) to this effect that as far back as in 1934 the property in question was given by its owner to the Ladies Club, Rae Bareilly.

The opposite party as Secretary of the Club, is asserting that possession of the Ladies Club continues since then uninterrupted.

10. Therefore, it cannot be said that the order of the Magistrate passed u/s 145(1) Code of Criminal Procedure drawing up the proceedings was

incorrect, improper or illegal. Learned Counsel for the revisionists has referred to the certified copy of an earlier judgment contained in Annexure-

R-1 but it cannot be said on perusing it that it pertains to the property in question. The judgment, on the other hand, shows that it was in respect of

the possession over plot No. 2235. Property of that plot is not in dispute in the proceedings u/s 145 Code of Criminal Procedure .

11. Both the parties have been given ample opportunity to file their written statements in the proceedings u/s 145 Code of Criminal Procedure and

put forward their claims of possession over the property in question for being considered by the Court in the course of the pending proceedings.

12. Coming to the second point raised from the side of the revisionists pertaining to order u/s 146(1) Code of Criminal Procedure, the preliminary

objection raised from the side of the opposite party is that no revision is maintainable against the interlocutory order in view of the express bar

contained u/s 397(2) Code of Criminal Procedure.

13. Section 397(2) Code of Criminal Procedure is reproduced below :  $\tilde{\hat{\Delta}}\hat{\Delta}\hat{\Delta}\frac{1}{2}$ 397(2). The powers of revision conferred by sub -- Section (1) shall

not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.  $\tilde{\hat{\Delta}}\hat{\Delta}\hat{\Delta}\frac{1}{2}$

These provisions clearly bar filing of a revision against an interlocutory order passed in any judicial proceedings. Learned Counsel for the

revisionists contended that the order passed u/s 146(1) CrPC attaching the property in question is not an interlocutory order and consequently, is

not hit by Section 397(2) Code of Criminal Procedure. This point stands concluded by a Division Bench Ruling of this Court in the case of Indra

Dev Pandey v. Bhagwati Devi 1981 AWC 314 ; 1981 ACR 173. After discussing the law in detail the Division Bench came to the conclusion :

Viewed in this light, it is apparent that the order for attachment of property u/s 146(1) of the Code made during the pendency of the proceedings

u/s 145 is an order purely of an intermediate or temporary nature. It neither decides nor purports to affect any legal right of any of the parties. The

order is made for the purposes of effective adjudication of proceedings initiated u/s 145 of the Code. It does not result in the disposal of any part

of the controversy between the parties or the proceedings under Sec 145; In such a case no question of proceedings being concluded one way or

the other if the plea of one party or the other is accepted arises. Accordingly applying the test laid down by the Supreme Court in the case of Amar

Nath and Others Vs. State of Haryana and Another, in the light of the observations made by that Court in Madhu Limaye Vs. The State of

Maharashtra, we are, of opinion that an order made during the pendency of proceedings u/s 145 of the Code for attaching property in dispute u/s

146(1) of the Code is purely an interlocutory order within the meaning of Section 397(2) of the Code.

Hence the order of attachment passed u/s 146(1) Code of Criminal Procedure is nothing else but an interlocutory order within the meaning of

Section 397(2) Code of Criminal Procedure and further that the latter Section lays down a clear bar in filing a revision petition against that order.

Result is that the impugned order passed u/s 146(1) Code of Criminal Procedure cannot be challenged in a revision filed u/s 397 Code of Criminal

Procedure .

14. In this view of the matter there is no point in entering into the merits of the order passed u/s 146(1) Code of Criminal Procedure though the

Learned Counsel for the revisionists has dealt with the merits of the order passed u/s 146(1) Code of Criminal Procedure at length and also

referred to certain rulings dealing with the merits.

15. Learned Counsel for the revisionists further contended that the order u/s 146(1) Code of Criminal Procedure is not maintainable for the reason

that it was passed without any fresh material being brought on record. This question hardly arises after the finding of this court that no revision

against the order passed u/s 146(1) Code of Criminal Procedure is maintainable.

16. The result is that the revision petition has no merits and is dismissed. Revision dismissed.