

**(1998) 09 AHC CK 0170**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Criminal Miscellaneous Case No. 16 of 1998

Ibrar Ahmad

APPELLANT

Vs

Akhtar and Another

RESPONDENT

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**Date of Decision:** Sept. 18, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 146(1), 482

**Citation:** (1999) 1 ACR 320

**Hon'ble Judges:** Dev Kant Trivedi, J

**Bench:** Single Bench

**Advocate:** C.M. Hag, for the Appellant; G.A. and J.P. Mature, for the Respondent

**Final Decision:** Disposed Of

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### **Judgement**

Dev Kant Trivedi, J.

This petition u/s 482 of the Code of Criminal Procedure is directed against an Order dated 23rd December, 1997 passed by the Sessions Judge, Gonda, whereby the learned Incharge Sessions Judge admitted a revision against the order dated 10th December, 1997 passed by S.D.M., Tulsipur in Criminal Case No. 91 u/s 145 of the Code of Criminal Procedure.

2. It appears that on an application moved by the Petitioner and after hearing the parties' counsel and perusing the report of the police station concerned, the S.D.M., Tulip was of the opinion that there was an apprehension of breach of peace on account of the possession of a house situate in village Hereto. The learned S.D.M., therefore, passed a preliminary order and directed the parties to file their written statements. The learned S.D.M. passed an order u/s 146(1) of the Code of Criminal Procedure as an interim measure who attached the property and issued a direction to S.O., Gaura Chauraha either to keep the property in dispute in his custody or to give the same in the supercargo of the third person.

3. Feeling aggrieved from the said order, the opposite party Kantar filed a revision before the learned Sessions Judge, Gonad. The revision was admitted and the operation of the Order dated 10.12.1997 whereby the order of attachment was made, was stayed.

4. The present petition has been filed against the said order of the learned In charge Sessions Judge on the ground that no revision was maintainable against the Order dated 10.12.1997 as the same was an. interlocutory order.

5. Both the parties have advanced their arguments.

6. There can be no dispute that the learned S.D.M. had the jurisdiction, if he considered the case as one of emergency, to attach the subject of dispute. In the present case, learned S.D.M. has only exercised his powers u/s 146(1) of the Code of Criminal Procedure and has simultaneously directed the parties to adduce evidence, a date for which was also fixed. The order in question was thus simply made as an interim measure and was apparently the interlocutory order. No revision against the said order was, therefore, maintainable.

7. The learned in charge Sessions Judge committed an error in admitting the said revision. The learned Sessions Judge, therefore, could not have entertained the revision.

8. It has been urged on behalf of the opposite party that the order dated 10.12.1997 so far as it relates to the attachment of the property u/s 146(1) of the Code of Criminal Procedure, is concerned, the same was within the jurisdiction of the learned S.D.M. It has, however, been urged that the learned S.D.M. does not have the jurisdiction to issue a direction to the S.O. to give the property in the supercargo of a third party.

9. In the present case, since the dispute related to a house, the order passed by the learned S.D.M. directing the S.O. to attach the property and to give the same in the supercargo of an independent person, was the only alternative left with the learned S.D.M. Merely because the learned S.D.M. did not pass an order regarding the appointment of a receiver, it cannot be said that the learned Magistrate did not have the jurisdiction to issue a direction for putting the .property into the custody of the Station Officer, or an independent person to be named by the Station Officer who was the person knowing the position at the spot. Reliance has been placed on behalf of the opposite party on Mahan Lai Rains v. Addl. City Magistrate. 1st. Luck now and others 1989 (7) LCD 143, wherein the practice of leaving the attachment to the S.O. was not approved by the Court. The facts of that case were, however, very different, inasmuch as there was a running business in dispute in the said case. In the present case, however, the house in a village is in dispute and the only viable order was a direction to the S.O. to give the property in possession of a person appointed by him. At any rate, the order of the learned Magistrate cannot be found fault with merely because he directed that a reliable person be appointed as supporter and

the property be placed in his custody during the tendency of the proceedings. The benefit of the authority referred to above is not available to the Petitioner in the present case.

10. In view of what has been stated above, it is evident that the learned in charge Sessions Judge exceeded his jurisdiction in admitting the revision against the interlocutory order; hence the impugned order dated 23rd December, 1997 passed by the in charge Sessions Judge, Gonad is bound to be set aside.

11. The petition is allowed. The proceedings of Crl. Revision No. 432 of 1997 are quashed and the order dated 23.12.97 passed by in charge Sessions Judge staying the operation of the order dated 10.12.1997 is also quashed.

12. Since the matter is pending for long, it is directed that the parties will appear before the learned S.D.M. on 26th October, 1998 and the matter will be disposed of within a period of three months by the learned S.D.M. from the said date after affording an opportunity to the parties to adduce evidence in support of respective contentions. A copy of this order will be transmitted to the learned S.D.M. within a week and the copies will be provided to the parties within a week on payment of usual charges.