

## Manager, Urrunabund Tea Estate Vs Prasad Bhumij

**Court:** Gauhati High Court

**Date of Decision:** April 20, 1989

**Acts Referred:** Criminal Procedure Code, 1973 " Section 145  
Criminal Procedure Code, 1973 (CrPC) " Section 145

**Citation:** (1991) 1 GLJ 278

**Hon'ble Judges:** Y.Ibotombi Singh, J

**Bench:** Single Bench

**Advocate:** S.K.Sen, S.Das Gupta, R.P.Sharma, J.P.Bhattacharjee, G.N.Sahewalla, Advocates appearing for Parties

### Judgement

1. This is an application under section 482 read with section 401 CrPC to revise the orders dated 15.6.83 and 9.5.83 passed by the learned

Executive Magistrate in Case No. 57 M of 1981.

2. The Manager, Urrunabund Tea Estate, Cachar lodged a written complaint with the SubDivisional Magistrate (Executive), Cachar on 24.2.81

for drawing up a proceeding under section 144 CrPC against the opposite parties and their associates for restraining them from entering into the

land measuring 100B IK and 10 Chataks covered by Patta No. 69/127, which is hereinafter, referred to as the "disputed land".

3. On the basis of the allegations made in the petition the learned Magistrate was satisfied that there was sufficient ground for proceeding under

section 144 Criminal Procedure Code, in short "the Code", and therefore he initiated the proceeding under section 144 CrPC against the opposite

parties and restrained them from entering into the disputed land. The opposite parties who were the second party in the said case filed written

statement stating that the case was not maintainable inasmuch as there was no immediate apprehension of the breach of peace. However, the

learned Magistrate, by his order dated 24.4.81, converted the said proceeding under section 144 CrPC into one under section 145 CrPC and the

parties were directed to file written statements and documents in respect of their respective claims.

4. Since the second party encroached upon some portions of the disputed land the Management instituted a suit being Title Suit No. 7 of 1983 in

the Court of Assistant District Judge No. 13 Silchar against the opposite parties for declaration of right, title and interest, and confirmation of

possession. It is to be noted here that the land in dispute in the said civil suit and the said criminal case are one and the same. After the institution of

the suit the petitioner also made an application under Order 39 Rule 1 for issuing an interim injunction restraining the opposite parties from

interfering with the possession of the petitioner in respect of the land in dispute. The learned Assistant District Judge, by his order dated 13.4.83,

had issued temporary interim injunction restraining the opposite parties and their associates from interfering with the peaceful possession of the

petitioner in respect of the suit land which includes the present disputed land. After the institution of the suit and the issue of the aforesaid order of

injunction of the learned Assistant District Judge the proceeding under section 145 CrPC became unnecessary and superfluous and therefore, the

petitioner made an application on 18.4.83 to the learned Executive Magistrate with a prayer to drop the proceeding under section 145 CrPC.

However, the learned Magistrate, by his order dated 9.5.83, rejected the prayer for dropping the proceeding under section 145 CrPC and fixed

19.5.83 for hearing of the case. The petitioner again filed an application on 14.6.83 for dropping the proceeding under section 14 CrPC in

respect of the disputed land which was the subject matter of the said title suit. However, the learned Magistrate passed an order on 15.6.83

rejecting the prayer of the petitioner and the case was fixed on 1.7.83 for argument. Being aggrieved by the said orders dated 9.5.83 and 15.6.83

passed by the learned Magistrate, the petitioner has filed the present application.

5. Right in the beginning, Shri G. N. Sahewal, the learned counsel for the petitioner has vehemently urged that the learned Magistrate erred in

law in continuing the proceeding under section 145 CrPC when the civil Court has passed an injunction order restraining the second parties from

entering into the disputed land. Now, if there is an order in regard to possession by interim injunction, before or after initiation of proceeding under

section 145 due weight should be given to it and it may be advisable to drop the proceeding under section 145 CrPC. However, even though, the

civil suit is pending between the parties for determination of their rights in respect of the disputed land if there is apprehension of breach of peace

there is no bar in continuing the proceeding under section 145 CrPC. In the present case, the petitioner has submitted that there is absolutely no

apprehension of the breach of peace between the parties over the possession of the disputed land after the said injunction order was issued by civil

Court. The second party, as stated above, filed written statement stating that there was absolutely no apprehension of breach of peace between the

parties over the possession of the disputed land. Hence I do not find any ground for continuing the proceeding under section 145 CrPC after the

order of injunction was passed by the civil Court specially when there is no apprehension of breach of peace between the parties over the

possession of the disputed land. The learned counsel for the petitioner has drawn my attention to the decision made in Ram Sumer Pan Mahanta vs.

State of U.P., AIR 1986 SC 472. In said case it was held that

When a civil litigation is pending for the property wherein question of possession is involved and has been adjudicated, initiation of parallel criminal

proceedings under section 145 of the Code would not be justified and that the parallel proceedings should not be permitted to continue and the

criminal Court should not be allowed to invoke its jurisdiction when the question of possession is being examined by the civil Court.

In the said case it was also observed that multiplicity of litigation is not in the interest of the parties or should public time be allowed to be wasted

over meaningless and unnecessary litigation and that proceeding under section 145 CrPC should be drawn up and continued when the public order

and tranquility jeopardised. It was further observed that if the disputes are private dispute or not required to be taken care of, for maintenance of

public order and tranquility they would be dropped with a direction to the parties to fight out the litigation in an appropriate civil Court

6. Now, in the case in hand, the dispute is purely private dispute between two sets of persons. It is not in any way connected with public order and

tranquility. At any rate, the dispute between the parties is not required to be taken care of for maintenance of public order and tranquility.

7. Therefore, in view of the aforesaid injunction order issued by the civil Court the continuation of the proceedings under section 145 was

absolutely unnecessary. It was for that learned Magistrate to drop the proceeding immediately with a direction to the parties to fight out the

litigation in the said civil Court. As he had not done so, the learned Magistrate erred in law in passing the orders for continuing, the proceeding

under section 145 CrPC. Hence, I find force in the above contention of the learned counsel. For these reasons, the impugned orders must not be

allowed to stand.

8. In the result, the petition is allowed and the proceeding under section 145 CrPC is dropped with a direction to fight out the litigation in the civil

Court.