

## Kalpana Devi and Sanjay Yadav Vs The State of Jharkhand and Others

**Court:** Jharkhand High Court

**Date of Decision:** June 20, 2008

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 144, 145, 146(1)

**Citation:** (2008) CriLJ 4667 : (2008) 3 JCR 422

**Hon'ble Judges:** Dhananjay Prasad Singh, J

**Bench:** Single Bench

**Advocate:** P.K. Prasad, Nilesh Kumar and V.K. Prasad, for the Appellant; Assistant Public Prosecutor and Anil Kumar Jha, for the Respondent

**Final Decision:** Dismissed

### Judgement

D.P. Singh, J.

Heard both sides at length.

1. The present revision petition has been preferred against the order dated 15.12.2004 by which the disputed plot described in the impugned order

has been attached u/s 146(1) Cr.P.C. in connection with Cr. Miscellaneous Case No. 489 of 2003.

2. Brief facts leading to this revision petition are that the Officer-in-Charge, Deoghar Town Police Station reported to the S.D.M., Deoghar in non

cognizable offence case No. 24 of 2003 that Town Plot No. 818 out of J.B. No. 109/3271, Holding No. 395 situated in Mauza Shyamganj,

Mohalla- Caster Town, Deoghar having an area of 18 Katha 19 Ganda has become a subject matter of dispute between the present parties and

there was serious apprehension of breach of peace.

3. The learned S.D.M, Deoghar, accordingly, initiated a proceeding u/s 144 Cr.P.C. Parties were noticed and after hearing both sides vide order

dated 3.2.2004 the proceeding was converted into Section 145 Cr.P.C. to decide the factum of possession on the disputed property. On 5th

March, 2004 opposite parties filed a petition before the learned S.D.M., Deoghar for attachment of the subject matter u/s 146(1) Cr.P.C. The

matter was adjourned for filing of documents and written statement in support of their cases as well as rejoinder to the petition dated 5.3.2004.

4. In the meantime the learned SDM, Deoghar called for a report from the Officer-in-Charge, Deoghar Town Police Station. Finally on

15.12.2004 the impugned order was passed by which the property in dispute was attached appointing the Officer-in-Charge, Deoghar Town

Police Station its caretaker.

5. The present revision petition has been preferred mainly on the ground that the learned court below has failed to consider the facts that the

proceeding initiated earlier on 3.2.2004 has specifically mentioned that the proceeding was initiated regarding disputed plot excluding the

residential house. Sri P.K. Prasad, learned senior counsel appearing for the petitioner asserted that in view of the provisions of law, the learned

SDM could not have exceeded the area or property which was not subject matter of the proceeding u/s 144 Cr.P.C. In this context, Sri Prasad

relied upon 1990 (2) PLJR 237. It was further, submitted that the existence of any emergency as on the date of passing of the order is missing in

the facts of this case.

6. Sri A.K. Jha, learned Counsel appearing on behalf of the opposite parties vehemently opposed this contention on the grounds that the subject

matter includes the house in question and the description given in the impugned order satisfies the requirements of law as it clearly includes

residential house situated on plot in question. In this context Sri Jha relied upon 2006 (2) JLJR 569 stressing that the facts of the present case are

alike to the facts discussed in the decision cited above. Sri Jha further pointed that the report of the Officer-in-Charge, Deoghar Town Police

Station submitted in compliance of the direction of SDM, Deoghar vide Annexure-C along with supplementary affidavit dated 24.4.2008, the

learned SDM, Deoghar has rightly attached the property to avoid blood shed and breach of peace likely to take place.

7. I have gone through the materials on record. Serious dispute regarding possession and right to possess is going on between the parties for the

property described fully in the impugned order. This order further mentions the reasons as why such apprehension of breach of peace was

continuing. The report of the Officer-in-Charge, Deoghar Town Police Station vide annexure-C is evident that in spite of different proceedings

between the parties as well as against the petitioners initiated by the administration there was imminent apprehension of breach of peace. The fact

remains that there were attempts for possession of the property in question. The provisions of attachment of the disputed property has been

incorporated under the provisions of law just to avoid any such activities which may ordinarily result in breach of peace, with serious consequences

in loss of life and property.

8. I further find, the impugned order while attaching the properties has mentioned valid reasons for attachment of the disputed property.

9. In the facts stated above, I do not find any merit in this revision application. In the result, this revision application is dismissed.