the succeeding year, renewal thereof. It had to be ascertained by the authorities, and rightly, whether in fact the registered firm had taken birth as envisaged under section 184 of the Act. The Appellate Assistant Commissioner held that it had come into existence and the Tribunal endorsed that view. The advisory jurisdiction of this Court cannot be invoked to correct any errors of fact or even of inferences in respect of a given set of facts. This Court in *Commissioner of Income-tax, Patiala* v. *Suraj Bhan & Co.*, (1), in somewhat similar circumstances, declined such a prayer when the assessee-firm therein was additionally found to indulge in speculation business, an activity unlawful, which did not debar the Income-tax Tribunal to hold as a fact that the subsistence of the partnership instrument evidencing the creation of the firm and the element of mutual agency, justified the registration of the firm. The case cited by the Revenue in *Commissioner of Income-tax, Patiala-I* v. *Hardit Singh Pal Chand & Co.* (2), is clearly distinguishable, as the activity had been carried on by a re-constituted firm whose very existence at the outset was not recognised under the rules framed under the Punjab Excise Act, yet the business of possessing and selling liquor was carried on by the firm in violation of the provisions of the Punjab Excise Act and the rules framed thereunder, as also the conditions of the licence, right from its inception.

(4) The upshot of the above discussion is that these are not cases for the issuance of *mandamus* as asked for. Accordingly the prayer is declined. No costs.

N.K.S.

Before M. M. Punchhi, J.

SARDARI LAL,—*Petitioner.*

versus

NARSINGH BAHADUR AND ANOTHER,—*Respondents.*

Criminal Misc. No. 445-M of 1985.

May 14, 1985.

Code of Criminal Procedure (II of 1974)—Section 145—Dispute regarding possession of land—Breach of peace apprehended—Magistrate taking congnizance on a police report—One of the parties asserting during the proceedings that no apprehension of breach of peace

(1) (1983) 144 I.T.R. 943.

(2) (1979) 120 I.T.R. 289.

over the disputed land existed and that he did not want to proceed in regard to the determination of the factum of possession—Magistrate —Whether bound to accept such a statement and drop the proceedings.

Held, that it is true that all disputes of property are not to be settled by a Magistrate under section 145 of the Code of Criminal Procedure 1973, but only those disputes about possession in which there is likelihood of breach of peace. This proposition, however, does not apply when one party asserts that there is no apprehension of breach of peace and the other disputes it, then obviously the Magistrate who has passed a preliminary order in the first instance is not obliged to accept the version of one of them and drop the proceedings. However, it is open to him to otherwise come to the conclusion that apprehension of breach of peace has ceased to exist.

(Para 2)

Application Under Section 482 Cr. P. C. praying that the petition may be accepted and the impugned order dated 6th January, 1984 and 24th July, 1984 may be set aside.

It is further prayed that during the pendency of petition the operation of the impugned orders may be stayed.

V. G. Dogra, Advocate, *for the Petitioner.*

Ravinder Seth, Advocate and Bachittar Singh, Advocate *for A. G. Punjab for the Respondent.*

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) The parties raised this dispute under section 145, Code of Criminal Procedure, pertaining to a plot of land measuring about 18 *marlas* situated in Basti Guzan, Jullundur City. The Executive Magistrate, Jullundur, became seisin of the matter on a police report dated December 7, 1980. Both parties led evidence to support their case regarding possession. In the meantime, receiver had been appointed to take possession of the plot. When the matter was nearing conclusion, counsel for the first party, the petitioner herein, made a statement before the Court on September 14, 1983, that there is no apprehension of breach of peace over the disputed

vacant land between the parties and he did not want to proceed further in the case. Accordingly he requested for withdrawal of the case. This prayer was more or less reiterated on December 23, 1983, by making a statement that the lawyer had no instructions from his client. It seems that the Executive Magistrate did not take these statements of the counsel for the first party seriously, for the other party was sanguine that the dispute existed and it needed determination all the more when the receiver had taken possession of the plot who had to release it in favour of the successful party. It is in these circumstances that the Executive Magistrate on January 6, 1984, pronounced in favour of the respondent, holding that he was in possession of the disputed land, sequally directing the receiver to put him in possession. The petitioner's effort to get this order upset from the Court of Session was unsuccessful. Now, he has approached this Court under section 482, Code of Criminal Procedure.

(2) The only ground urged is that the order of the learned Magistrate was without jurisdiction as there had remained no apprehension of breach of peace as intimated to him by the counsel for the petitioner. Supportingly, it is urged "that all disputes of property are not to be settled by a Magstrate under section 145, Code of Criminal Procedure, but only those disputes about possession in which there is likelihood of breach of peace. There can be no quarrel with this proposition, but it seems, on the facts and circumstances of the present case, to be misapplied. When one party asserts that there is no apprehension of breach of peace and the other disputes it, then obviously the Magistrate who has passed a preliminary order in the first instance is not obliged to accept the version of one of them and drop the proceedings". However it is open to him to otherwise come to the conclusion that apprehension of breach of peace has ceased to exist. Here no such thing happened as the learned Magistrate did not seemingly accept the word of the counsel for the first party. Additionally, he was required to deliver possession to some one on the dropping or finalisation of the proceedings, as the case may be. Here he concluded the proceedings by holding in favour of the respondent. I find no reason which could impel me to cause interference in the said order even if on merits a different view was possible. Thus, finding no cause for interference, I dismiss this petition.

N.K.S.