Magistrate in his order with regard to the age of the accused is merely an opinion and not a finding. Though it is true that the order of the Magistrate is somewhat loose in this context, yet, read in the spirit of section 7(1) of the Act, it has to be held that what he meant was that he was of the opinion that Balvinder Singh accused and Amarjit Singh accused were less than 16 years of age. That opinion being tentative, was sufficient to set the Act into motion. It is for the Children's Court ultimately to record its final opinon under sub-section (3) of section 7 of the Act that the persons concerned brought before him were not children. Thereupon, it is required to send the matter to the Court having jurisdiction over the proceedings. In other words, his final opinion, that the aforesaid two accused persons were not children, would have the effect of his sending the case back to the learned Magistrate for their being committed to the Court of Session. But, at the present stage, that final opinion being not there, there is no occasion to disturb the impugned order merely because it contains a tentative opinion of the Magistrate, on which count the petitioner is aggrieved.

(6) For the foregoing reasons, this petition fails, recording a note of a clarificatory nature.

N.K.S.

Before S. S. Sandhawalia, C.J. & D. S. Tewatia, J.

NACHHATTAR SINGH and others,—*Petitioners.*

versus

GURINDER SINGH and others,—*Respondents.*

Criminal Misc. No. 827-M of 1962.

November 12, 1982.

Code of Criminal Procedure (II of 1974)—Sections 145(1) and 146(1)—Dispute regarding immovable property—Proceedings initiated under section 145—Magistrate recording his satisfaction that the dispute is likely to cause breach of peace—Further finding that the case is one of emergency under section 146(1)—Both these findings—Whether could be recorded in the same order.

Held, that sections 145 and 146 of the Code of Criminal Procedure, 1973 constitute a single scheme and are to be construed and applied harmoniously. Once the Magistrate is satisfied that the dispute likely to cause a breach of peace exists and there is adequate

material before him to find that the case is clearly one of emergency needing urgent redress by way of attachment and the appointment of a Receiver, there is no reason why he should be debarred from proceedings forthwith under section 146(1) of the Code. Indeed, in a peculiar urgent situation calling for immediate action, any substantial time-lag betwixt the primary order under section 145(1) of the Code and the attachment and appointment of a Receiver, on the ground that the case is one of emergency, may not only be counter-productive, but might well frustrate the very purpose of the preventive action visualised by these provisions. It is true that the satisfaction of the Magistrate that action under section 145(1) of the Code is called for, must necessarily precede the finding that the case is of emergent nature requiring attachment of property. However, from this, it does not necessarily follow that the satisfaction of the Magistrate under section 145(1) of the Code and the finding of emergency cannot be recorded in the said sequence in a composite order. Thus, the satisfaction regarding the existence of a dispute likely to cause a breach of peace under section 145(1) of the Code and the further finding that the case is one of emergency under section 146(1) of the Code can on adequate materials be validly recorded in the same composite order. (Paras 5 and 13)

Kartar Singh and another *vs.* The State of Punjab and another, Crl. Misc. No. 1678-M of 1980 decided on 1st August, 1980.

Nachhattar Singh *vs.* Sucha Singh and others, Crl. Misc. No. 1502-M of 1980, decided on 6th August, 1980.

Mela Singh and others *vs.* Mst. Kesro, 1981 C.L.R. 60.
Smt. Zilo *v.* The State of Haryana and others, 1980 Crl. L. T. 234.

..... Sarwan Singh and others *vs.* State of Punjab and others, Crl. Misc. No. 2867-M of 1980 decided on 29th August, 1980.

..... Indian Sulp. Acid Industries Ltd. *vs.* Gurjit Singh 1982 P.L.R. 143.

OVERRULED

Petition under Section 482 Cr. P.C. praying that the order of the Sub-Divisional Magistrate Nabha, dated 12th February, 1982 attached as annexure P-7 and all the proceedings thereunder be quashed.

And further it is, prayed that during the pendency of the petition the operation of the order Annexure P-7 be stayed and the Receiver may be restrained from auctioning the land in dispute under the orders under challenge and further he be directed to hand over the possession to the petitioners.

R. M. Gupta, Advocate, *for the Petitioner.*

Harbans Singh, Advocate, *for private respondents.*

Amar Dutt, Advocate, *for State.*

JUDGMENT

S. S. Sandhawalia, C. J.

(1) Whether the satisfaction of the Magistrate with regard to the existence of a dispute likely to cause breach of peace under Section 145(1). Code of Criminal Procedure, 1973 (hereinafter referred as 'the Code') and the further finding that the case is one of emergency under Section 146(1) of the Code, can be validly recorded in the same composite order—is the somewhat significant question which has necessitated this reference to the Division Bench.

2. For the adjudication of the aforesaid question, it is unnecessary to advert to the facts in elaborate detail. It suffices to mention that against a background of protracted civil litigation betwixt the parties, the respondents made an application (annxure P/6) to the Station House Officer of police station Bhadson, on January 20, 1982, for initiation of proceedings under Section 145 of the Code. The police authorities thereafter made a report to the Sub-Divisional Magistrate, who passed the impugned order, (annexure P/7). Therein, he found that there existed a serious dispute betwixt the parties over the possession of agricultural land which was likely to spark off a breach of peace at any time. In the concluding paragraph of the order, he further recorded his satisfaction that the case was one of emergency likely to endanger an immediate breach of the peace and consequently exercising his powers under Section 146(1) of the Code, he attached the agricultural land along with the crops standing thereon and appointed Shri Balbir Singh, Naib-Tehsildar, as a Receiver thereof.

3. The petitioners herein challenge the proceedings under Section 145 and 146 of the Code on a variety of grounds, including the one, that the invocation of Sections 145(1) and 146(1) of the Code, in the same order was an abuse of the process of law. This criminal miscellaneous petition first came up before my learned brother D. S. Tewatia, J. sitting singly. Noticing the significance of the question, as also some conflict of precedent, in the view held by this Court as against three other High Courts, the matter was referred for an authoritative decision to a larger Bench.

4. As the issue turns primarily on the language of Sections 145(1) and 146(1) of the Code, as also the sequence and the context in which these provisions are laid, it seems to be apt to view the same

against the background of their legislative history. Sections 145 and 146, Code of Criminal Procedure, 1898 (hereinafter called the old Code'), were contained in Chapter—XII, under the heading "Disputes as to Immovable Property". The provisions relating to 'Unlawful Assemblies"—"Public Nuisances" and, "Temporary Orders in Urgent Cases of Nuisance or Apprehended Danger" were contained in Chapters IX, X and XI, respectively. Certain changes were introduced in Section 145 of the old Code by the amendment thereof in 1955. However, all these provisions have now been recast under the new Code and find place in Chapter X under the main head "Maintenance of Public Order and Tranquillity". The third proviso to sub-section (4) of Section 145 of the old Code, provided that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section. That proviso has been deleted from Section 145 of the Code and now included in Section 146(1) of the Code. It is unnecessary to delve further into the intricacies and the structure of the changes made in Sections 145 and 146 of the new Code because that appears to be intrinsically intended to rationalize and recast the provisions rather than to make any radical changes in the law. This has been authoritatively so held in *Mathuralal* v. *Bhanwarlal and another* (1), wherein, after noticing and juxtaposing the provisions contained in the old Code, its amendment by 1955 Act and the provisions of the new Code, it has been observed as follows:—

> "Quite obviously, Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace because of a dispute concerning any land or water or their boundaries. If Section 146 is torn out of its setting and read independently of Section 145, it is capable of being construed to mean that once an attachment is affected in any of the three situations mentioned therein, the dispute can only be resolved by a competent Court and not by the Magistrate effecting the attachment. But Section 146 cannot be so separated from Section 145. It can only be read in the context of Section 145. Contextual construction must surely prevail over isolationist construction. Otherwise, it may mislead. That is one of the first principles of construction. Let us therefore,

(1) 1980 S.C.C. (Cri.) 9.

look at Section 145 and consider Section 146 in that context ....."

5. Now once it is held that Sections 145 and 146 of the new Code constitute a single scheme and are to be construed and applied harmoniously, the answer to the question posed at the outset seems to be self-evident. Once the Magistrate is satisfied that the dispute likely to cause a breach of peace exists and there is adequate material before him to find that the case is clearly one of emergency needing urgent redress by way of attachment and the appointment of a Receiver, there is no reason why he should be debarred from proceeding forthwith under Section 146(1) of the Code. Indeed, in a peculiar urgent situation, calling for immediate action, any substantial time-lag betwixt the primary order under Section 145 (1) of the Code and the attachment and appointment of a Receiver, on the the ground that the case is one of emergency, may not only be counter-productive, but might well frustrate the very purpose of the preventive action visualised by these provisions. It is true that the satisfaction of the Magistrate that action under Section 145(1) of the Code is called for, must necessarily precede the finding that the case is of emergent nature requiring attachment of property. However, from this, it does not necessarily follow that the satisfaction of the Magistrate under Section 145(1) of the Code and the finding of emergency cannot be recorded in the said sequence in a composite order. On behalf of the petitioners, it was sought to be contended somewhat pedantically that there must necessarily be a time-gap between the two and in any case the orders under Sections 145(1) and 146(1) of the Code must be recorded separately. I have already opined that a long delay in this context might well work mischief and equally I see no magic in recording the two orders on separate sheets of paper. I take the view that the satisfaction about the breach of peace and the finding of the case being one of emergency, can follow close on its heels on the basis of the same or over-lapping materials and there can possibly be no infirmity in a composite order recording the same in succeeding paragraphs.

6. The view I am inclined to take above finds support from the prevailing precedents in three other High Courts. As has been opined earlier, the changes in the new Code, in this context, are more or less structural and therefore, precedents with regard to the old Code continue to be relevant and applicable. In *Mahant*

Bhagwandas v. *Suggan and others*, (2), the learned Single Judge while differing from the court below, concluded as follows:—

> "..... I am not prepared to agree with the conclusion of the Additional District Magistrate and hold that in appropriate cases a Magistrate is competent to issue an order of attachment along with the preliminary order without it being first served on the parties."

7. The Division Bench in *V. K. Rao* v. *Chandappa Appa, Devadiga* (3), whilst construing the corresponding provisions of the old Code, specifically held that these made it clear that the order under the third proviso of Section 145(4) , can be passed at any stage which would include the initial stage also. Consequently, it was held that where the two orders were passed at the same time, they would not be in any way vitiated. A learned Single Judge of the Andhra Pradesh High Court in *M. A. Rahaman* v. *State of Andhra Pradesh and another*, (4), in terms, followed the view in *V. K. Rao's case* (supra), in the following words:—

> "It is also submitted that both the orders could not be made simultaneously. In the first instance, this assumption is wrong. The first order was made under Section 145(1) Cr. P.C. and then the order under Section 146 Cr. P.C. was made. It is not necessary that there should be any time-lag between both the orders ...".

8. On the larger perspective, the Division Bench in *Ajaib Singh and another* v. *Amar Singh and others*, (4A) has taken the view that an overly hypertechnical construction of Section 145 of the Code is to be eschewed and even an omission of the Magistrate to pass a formal order in accordance with sub-section (1) of Section 145 of the old Code, is merely an irregularity which is curable under Section 537 of the (old) Code, unless it can be expressly shown that it caused grave prejudice to the other party. That view has been recently reiterated in *Narinder Singh and others* v. *State of Haryana*, (5).

(2) A.I.R. 1965 Rajasthan 143.
(3) 1977 (79) Bombay L.R. 16.
(4) 1981 Crl. L.J. 1291.
(4A) 1964(1) ILR Punjab 1.
(5) 1981 (2) I.L.R. Punjab and Haryana 84.

9. Undoubtedly, there appears to be a string of discordent notes struck by Single Benches within this Court. They appear to begin with the observations of Sidhu, J. in *Kartar Singh and another* v. *The State of Punjab and another* (6). The same learned Judge reiterated that view in (*Nachhattar Singh* v. *Sucha Singh and Ors*) (7). In *Smt. Zilo* v. *The State of Haryana and others* (8), Bains, J. sitting singly took the view that a composite order was illegal. He apparently followed that view in *Mela Singh and others* v. *Mst. Kesro* (9). In both these cases the matter appears to have been treated as one of first impression. In *Mela Singh and others' case* (supra) no appearance having been put in on behalf of the respondents, it is plain that the opposite view was not projected at all. Consequently, no reference to either principle or precedent appears for the dictum that a composite order was not envisaged and the Magistrate has no jurisdiction to pass one of the said nature. In line with his earlier view, Bains, J. in (*Shri Sarwan Singh and others* v. *State of Punjab and Ors.*), (10) quashed the composite order *in limine*. Again in *M/s Indian Sulp. Acid Industries Ltd.* v. *Gurjit Singh, Partner, Guru Nanak Construction Company, Amritsar*, (11) the learned Single Judge had observed as a dictum on the language of the provision alone that the composite order was not envisaged.

10. With respect, it seems to me that the view expressed in the aforesaid Single Bench authorities of this Court does not seem to be tenable. It stems primarily from an isolationist construction of the two provisions which was deprecated by their Lordships in *Mathuralal* v. *Bhanwarlal and Anrs.* (12). If, as held by the final Court, Sections 145 (1) and 146(1) of the Code constitute a single scheme, then construing the same in watertight compartments, as appears to have been done in this Court, is hardly tenable. The judgments taking the contrary view do not seem to have been brought to the notice of the learned Single Judge nor has the matter been adequately canvassed on principle. It would further appear that both in *Kartar Singh; and Nachhattar Singh's cases*,

(6) Cr. M. 1678—M of 1980 decided on 1st August, 1980.
(7) Cr. M. 1502-M/80 decided on 6th August, 1980.
(8) 1980 Cr. LT. 234.
(9) 1981 Ch. L.R. 60.
(10. Cr. M. 2867 M/80 decided on 29.8.80.
(11) 1982 P.L.R. 143.
(12) 1980 S.C.C. 9.

(supra), a fallacy had been introduced in the reasoning by treating all the three constingencies visualised in Section 146(1) of the Code, as at par. In my view the finding of a case being one of emergency, on adequate materials, is wholly distinct from the other two. As has already been opined earlier, an overly hypertechnical construction, in this context, might well frustrate the very purpose of the preventive action envisaged by these provisions.

11. With the greatest respect it appears to me that the view expressed in *Kartar Singh and another; Nachhattar Singh; Smt. Zilo; Mela Singh and others; Sarwan Singh and others;* and *M/s Indian Sulp. Acid Industries Ltd.;* cases, (supra) is not tenable and these cases are hereby overruled.

12. However, for clarity of precedent, it must be mentioned that I have opined specifically on the requirement under Section 146 of the Code with regard to the case of being one of emergency. As to the question, when the order of attachment is sought to be rested on the alternative basis that none of the parties was then in possession at the time of the preliminary order or where the Magistrate is unable to satisfy himself as to which of them was in possession, I would at this stage wish to express no opinion what-so-ever as the same has not at all been agitated before us.

13. To conclude both on principle and precedent, the answer to the question posed at the very out-set is rendered in the affirmative and it is held that the satisfaction regarding the existence of a dispute likely to cause a breach of peace under Section 145(1) of the Code and the further finding that the case is one of emergency under Section 146(1) of the Code can on adequate materials, be validly recorded in the same composite order.

14. Learned counsel for the parties are agreed that apart from the aforesaid significant legal question, other issues also arise on merits. We accordingly direct that the case be placed before the Single Bench for decision thereon.

D. S. Tewatia, J.—I agree.

N.K.S.