

always be open to the Court to strike down the offending exercise of power. In the present case itself, for example, the Sub-Divisional Officer ordered postponement of the election on the ground of "some serious allegations of misconduct." Though he did not say against whom the allegations of misconduct were made and what these allegations were, in the context of the events that took place it is clear that he was referring to the rejection of the nomination papers of Mohinder Singh by the Returning Officer. It was not for the Sub-Divisional Officer to question the rejection of the nomination papers. That could only be done by way of election petition. The Sub-Divisional Officer could not postpone the election on that ground. He could have postponed the election if there was any apprehension of a breach of the peace as a result of the rejection of the nomination papers. But such an apprehension was not the basis of the order of the Sub-Divisional Officer. The order of the Sub-Divisional Officer is thus a clear instance of abuse of power.

(4) As a result of our foregoing discussion, we hold that Rule 3(3) of the Gram Panchayat Election Rules is valid, but that the order of the Sub-Divisional Officer dated 5th July, 1972, is not valid. The appeal is allowed to the extent that Rule 3(3) is declared valid. No further direction is necessary from this Court as it was represented to us that the elections to the Gram Panchayat have already been held and the Gram Panchayat is functioning. There will be no order as to costs.

*H.S.B.*

REVISIONAL CRIMINAL

*Before M. R. Sharma and K. S. Tiwana, JJ.*

MOHINDER SINGH,—*Petitioner*

*versus*

SHRI DILBAGH RAI,—*Respondent*

Criminal Revision No. 220 of 1974

August 13, 1976.

*Code of Criminal Procedure (Act 2 of 1974)—Section 145—  
Litigation pending in a Civil Court—Ad-interim injunction issued*

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*restraining one party from interfering with the possession of the other—Criminal Court—Whether can initiate proceedings under section 145 and attach the disputed property.*

*Held*, that section 145 of the Criminal Procedure Code 1974 is a beneficial section enacted with the express object of preserving the peace. Under this section the criminal court can pass only a temporary order and the rights of the parties in fact are to be settled by the civil courts. In cases involving disputes of possession three types of orders can be envisaged to be passed by the civil Courts : (i) the appointment of receiver to manage the properties in dispute (ii) the restraining of one of the parties from interfering with the possession of that other party during the pendency of the suit about which the civil court *prima facie* feels satisfied and (iii) the maintenance of status quo about the possession of the property during the pendency of the case. If a civil Court appoints a receiver then there is no possibility of any dispute. In the second type of cases the jurisdiction of the criminal court cannot be restricted. Cases are not wanting where a party obtains an ad-interim stay in his favour but the other party uses force to dispossess him, in spite of the stay order leading to apprehension of the breach of peace creating a situation for the launching of proceedings under section 145 and attraction of its emergency powers under sub-section (4). In such a situation if the Magistrate acts then he adds the weight of the executive authority to respect the order of the civil Court for maintenance of status quo and does not violate any law. The third type of cases, that is, maintenance of status quo during the pendency of the civil suit is a situation in which a civil Court does not *prima facie* feel satisfied about any party being in possession of the subject matter of the suit. In such cases when both parties claim possession and the situation deteriorates then the police or the Magistrate cannot act as silent spectators to witness the breach of peace. In such circumstances if the Magistrate attaches the subject matter of the dispute under section 145 then he would be acting to defend the maintenance of the status quo as ordered by the civil Court. A Magistrate acting under section 145 is called upon to decide the question of possession. The Magisterial authority is quicker and has more effective sanction behind the orders passed under section 145 as compared with the powers of the civil Court under order XXXIX, rule 2(3) of the Code of Civil Procedure. The finding recorded by the Magistrate is subject to decision of the civil Court as the rights of the parties are not decided in proceedings under section 145. The mere pendency of the civil suit about the same subject matter between the same parties or the ad-interim orders of the Civil Court do not restrain the criminal Court from exercising jurisdiction under section 145 of the Code and the latter can attach the disputed property.

(Paras 7 to 12)

*Note*:—*Des Raj and others v. Sat Pal alias Satnam and others* 1973 Chandigarh Law Reporter 223,

*Kura and another v. Angrez Singh* 1974 (II) Chandigarh Law Reporter 331,

*Pal Singh v. Joginder Singh* 1975 P.L.J. (Cr.) 18,

*Ram Dhari and others v. The Sub-Divisional Magistrate, Kaithal and others* 1975 P.L.J. (Cr.) 41,

*Teja Singh v. Mohinder Singh and others* (Criminal Misc. No. 262-M of 1975), decided on 13th May, 1975,

*Mohd. Ismail v. State of Punjab* (Criminal Misc. No. 299-M of 1975), decided on 8th April, 1975.

#### OVERRULED.

*Case referred by Hon'ble Mr. Justice Kulwant Singh Tiwana, on October 7, 1975, to a larger Bench, for decision of an important question of law involved in this case. The Division Bench consisting of Hon'ble Mr. Justice M. R. Sharma and Hon'ble Mr. Justice Kulwant Singh Tiwana, finally decided the case on 13th August, 1976.*

Petition under Section 439 Cr. P.C. for revision of the order of *Shri S. K. Jain, Additional Sessions Judge, Patiala, dated the 18th day of February, 1974, affirming that of the Sub-Divisional Magistrate, Patiala, dated February 2, 1972, holding that there is a danger of breach of peace and ordering the Tehsildar, Patiala, to take possession of property during the pendency of the proceedings under section 145 Cr. P.C.*

*Narinder Singh, Advocate, for the petitioner.*

*A. N. Mittal, Advocate, with Viney Mittal, Advocate, for the respondent.*

#### JUDGMENT

*Kulwant Singh Tiwana, J.*

(1) Mohinder Singh petitioner, on the one hand, and Dilbagh Rai respondent, on the other, are litigating in the Civil Court at Patiala about the possession of a *khola* (dilapidated house) situated on the Press Road at Patiala. The Civil Court ordered the maintenance of the *status quo* during the pendency of the proceedings about the

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possession of this *khola*. The counsel for the parties are agreed that this order is still in force. During the pendency of this suit on 15th November, 1971, the local police made a report before the Sub-Divisional Magistrate, Patiala, for initiating proceedings under section 145, Criminal Procedure Code. On this report the learned Sub-Divisional Magistrate issued a notice to Mohinder Singh and Dilbagh Rai to file their respective claims about the actual possession of the *kotha* in his Court on 22nd November, 1971. On 1st February, 1972 the police made another report to the Sub-Divisional Magistrate requesting him for the attachment of the *kholaas* as there was imminent danger of the breach of peace. The learned Sub-Divisional Magistrate agreed with the police, attached the *khola*, i.e. the subject matter of the dispute and appointed Tahsildar Patiala to manage the *khola* till the final decision of the proceedings by that Court.

(2) Mohinder Singh petitioner filed revision petition against the order of attachment passed by the Sub-Divisional Magistrate, Patiala, dated 1st February, 1972, before the Additional Sessions Judge, Patiala, which was dismissed. Feeling dissatisfied with the order of the learned Additional Sessions Judge, he has filed the present criminal revision petition.

(3) At the time of arguments before me sitting in Single Bench 6 cases decided by this Court were cited. These are : (1) *Des Raj and others v. Sat Pal alias Satnam and others*, decided by P. S. Pattar, J., (2) *Kura and another v. Angrez Singh* decided by P. S. Pattar, J., (3) *Teja Singh v. Mohinder Singh and others*, decided by A. D. Koshal, J., (4) *Pal Singh v. Joginder Singh* decided by B. S. Dhillon, J., (5) and *Ram Dhari and others v. The Sub-Divisional Magistrate, Kaithal and others* (6), decided by Gurnam Singh, J. and *Mohd. Ismail v. State of Punjab* (7) decided by M. R. Sharma, J. The view expressed in all these cases is that when the parties had gone to the Civil Court about the same subject matter which is in dispute before a criminal Court and the civil Court issues injunction in favour of one of the parties or orders the maintenance of *status quo* then nothing remains to be done by the

- (1) Cr. R. 34—74 decided on 21-8-72.
- (2) Cr. R. 33-R/73 decided on 30-5-73.
- (3) Cr. M. 262-M/75 decided on 13-5-75.
- (4) Cr. M. 2046-M/74 decided on 8-11-75.
- (5) Cr. M. 2598-M/74 decided on 24-1-75.
- (6) Cr. M. 2599-M/74, decided on 24-1-75.
- (7) Cr. M. 299 M/75 decided on 8-4-75.

criminal Courts and that there remains no propriety or even scope for the invoking of the provisions of section 145, Criminal Procedure Code, in such cases. Stating this principle the learned Judges sitting singly in all these cases quashed the proceedings under section 145, Criminal Procedure Code, pending before the Magistrates.

(4) On behalf of the respondent Supreme Court decision in *Sajjan Singh, son of Jagan Nath Singh v. Sajjan Singh, son of Bhairu Singh and another* (8), was cited in which the Supreme Court in spite of the order of the stay of dispossession in favour of one of the parties by the civil Court, upheld the order of the Sub-Divisional Magistrate attaching the property and appointing a receiver. M. R. Sharma, J. following this judgment of the Supreme Court in *Narsi Ram and others v. The State and others* (9), observed—

“If a learned Executive Magistrate in exercise of jurisdiction under section 145, Criminal Procedure Code, orders the attachment of the property, he does not pass any order contrary to the orders passed by the civil Court regarding the maintenance of *status quo* as to possession.”

With these observations the order of the Sub-Divisional Magistrate attaching the property was upheld. *Vide* this judgment M. R. Sharma, J. expressed a view contrary to the view expressed by him in *Ram Dhari's case* (supra) and also to the other judgments referred to above.

(5) As divergent views had been expressed by the Judges of this Court in the cases referred to above, while sitting singly. I recommended this case to be placed before a larger Bench, for decision on the point, whether the proceedings under section 145, Criminal Procedure Code, including attachment of the subject matter of the dispute can be continued in the Courts of the Executive Magistrates when a civil suit between the same parties, about the same matter, covering the same relief, is pending in a civil Court and the civil Court has directed the maintenance of *status quo*. That is why this case has come before the Division Bench.

(8) 1970 (11) Unreported Judgments (S.C.) 75.

(9) Cr. R. 88 R/73 decided on 11th December, 1974.

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(6) The question which is before us is whether a criminal Court under section 145, Criminal Procedure Code, can initiate proceedings and attach the property (land or water) about which a case is pending in a civil Court between the same parties and the civil Court has issued *ad interim* injunction restraining one of the parties' from interfering in the possession of the other or has passed the order for maintaining *status quo* during the proceedings.

(7) Section 145 Criminal Procedure Code is a beneficial section enacted with the express object of preserving the peace. For the attainment of this object emergency provision for attaching the subject matter of dispute has been provided in it. Under this section the criminal Court can only pass a temporary order and the rights of the parties in fact are to be settled by the civil Courts.

(8) In such cases involving the disputes of possession in my view, three types of orders can be envisaged to be passed by the civil Courts: (i) appointment of receiver to manage the properties in dispute; (ii) the restraining of one of the parties from interfering with the possession of that party during the pendency of the suit about which the civil Court *prima facie* feels satisfied and (iii) the maintenance of *status quo* about the possession of the property during the pendency of the case.

(9) If a civil Court appoints a receiver then there is no possibility of any dispute of the possession as the receiver gets into the possession of the property on behalf of the Court and is to deliver it to that party in whose favour the Court ultimately decides. In such cases there cannot be any possibility of the dispute giving rise to the proceedings under section 145, Criminal Procedure Code as the Court removes apprehension of the breach of peace by putting the property in its custody.

(10) In the second type of cases *prima facie* it appears that there may not be any scope for the criminal Court to act under section 145, Criminal Procedure Code, because the civil Court *prima facie* feels satisfied about the possession of one of the parties to the litigation before passing the *ad interim* order in his favour defending his possession. On giving a deeper thought I do not think that this jurisdiction of a criminal Court can be restricted. Cases are not wanting where a party obtains an *ad interim* order in his favour to the effect that during the pendency of the suit the other party will not interfere in his possession. If the other party uses force to dispossess

him, in spite of the stay order in his favour, leading to the apprehension of the breach of the peace creating a situation for the launching of the proceedings under section 145, Criminal Procedure Code and attraction of its emergency powers under sub-section (4), the Magistrate will then step in, not to start parallel proceedings but to defend the orders of the civil Court by not allowing the aggressor to establish himself in possession of the subject matter of the dispute in violation of the orders of the Court. In such a situation if the Magistrate acts then he adds the weight of the executive authority to respect the order of civil Court for maintenance of *status quo* and does not violate any law. Yet another type of cases can be anticipated where one may enter into wrongful or forcible possession of the property leading to proceedings under section 145, Criminal Procedure Code. He may approach a civil Court and obtain an order in his favour that he may not be dispossessed from the property or for the maintenance of *status quo*. If this argument is accepted that when the civil Court is seized of a case then the proceedings under section 145, Criminal Procedure Code cannot continue and are to terminate, then armed with the order of the civil Court he may go to the criminal Court and get the proceedings under section 145, Criminal Procedure Code, dropped. After this he can get the civil suit filed by him dismissed and thus perpetuate his wrongful possession.

(11) The third type of cases, that is, maintenance of *status quo* during the pendency of the civil suit is a situation in which a civil Court does not *prima facie* feel satisfied about any party being in possession of the subject matter of the suit. In such cases when both parties claim possession, dangerous situation can develop with the anxiety of both or any one of them to get into actual possession. If the situation deteriorates then the police or the Magistrate cannot act as silent spectators to witness the breach of the peace. If they act in such circumstances and the Magistrate attaches the subject matter of the dispute under section 145, Criminal Procedure Code then he would be acting to defend the maintenance of the *status quo* as recorded by the civil Court.

(12) Such situations are not purely hypothetical or conjectural but do occasionally arise in the Courts. The position, that the Magistrate under section 145, Criminal Procedure Code, cannot continue with the proceedings when the civil Court is seized of the case or passes injunction orders referred to above, if accepted, can

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lead not only to breach of the peace but also to disrespect to the orders and the process of the civil Courts. M. R. Sharma, J., sitting singly, giving a dissenting view to the above referred to *Bir Singh and others v. State of Haryana* (10) decided on similar facts referring to *Teja Singh's case* (supra) observed—

“There is no quarrel with the aforementioned proposition of law but in a matter like this no hard and fast rule can be laid down. Sometimes during the pendency of a civil suit and during the continuance of an order of injunction passed by a civil Court the parties do violate the peace and try to take forcible possession of the land from one another. In such a situation the police or the weaker party would not be absolutely debarred from initiating proceedings under section 145 of the Code of Criminal Procedure.”

A Magistrate acting under section 145, Criminal Procedure Code is called upon to decide a question of possession, the nature and period of which is limited by this section. The Magisterial authority is quicker and has more effective sanction behind the orders passed under section 145, Criminal Procedure Code, for avoiding the breach of peace or recurrence of such breaches, as compared with the powers of the civil Court under Order XXXIX, rule 2(3), Civil Procedure Code. The finding recorded or the decision returned by a Magistrate in such cases is, of course, subject to the decision of the civil Court, as the rights of the parties to possession are not decided in proceedings under section 145, Criminal Procedure Code. The mere pendency of the civil suit about the same subject matter between the same parties or the orders of the Civil Court of the type discussed above do not restrain the criminal Court from exercising jurisdiction under section 145, Criminal Procedure Code. Their Lordships of the Supreme Court in *R. H. Bhutani v. Miss Man J. Desai and others* (11), approving the decision of the Bombay High Court in *Jiba v. Chandulal* (12), observed (para 14)—

“In A.I.R. 1926 Bom. 91 (supra) the High Court of Bombay held that it would be unfair to allow the other party the

(10) Cr. M. 728 M/75, decided on 15-7-76.

(11) A.I.R. 1968 S.C. 1444.

(12) A.I.R. 1926 Bombay 91.



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advantages of his forcible and wrongful possession and the fact that time has elapsed since such dispossession and that the dispossessor has since then been in possession or has filed a suit for a declaration of title and for injunction restraining disturbance of his possession is no ground for the Magistrate to refuse to pass an order for restoration of possession once he is satisfied that the dispossessed party was in actual or deemed possession under the second proviso."

(13) In *Sajjan Singh's case* (supra) the facts were that the parties had more than two rounds of civil litigation about a house. On the report of the police the Sub-Divisional Magistrate attached the property in dispute, that is, the house. One of the parties filed a suit for permanent injunction against the other party and obtained an injunction that his possession be not disturbed. He moved the Sub-Divisional Magistrate for the stay of the proceedings under section 145, Criminal Procedure Code, and also produced the injunction order. The Sub-Divisional Magistrate dismissed the application. The High Court upheld the order of the attachment as well as the appointment of the receiver made by the Sub-Divisional Magistrate. In appeal to the Supreme Court the order of the High Court was questioned. The Supreme Court upheld the order of the High Court and observed:—

"In our opinion this case must go back to the Sub-Divisional Magistrate for decision of the proceedings before him. Those proceedings commenced as far back as 1967 and the question whether there is or there is not any apprehension of breach of peace will certainly have to be decided in the light of the happenings in the Civil Court. In the meantime we do not see any reason to order the setting aside the order of the High Court. It will be open to the Sub-Divisional Magistrate to consider whether the Receiver should be continued or not, but in any event, he shall not disturb the possession of Sajjan Singh, son of Jagannath Singh so long as the temporary injunction is outstanding and pending the decision of the proceedings under section 145 of the Code of Criminal Procedure with a view to handing over the possession to the other side."

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The ratio of both these judgments of the Supreme Court is that the pendency of the same matter between the same parties in civil Court does not mean the ouster of the jurisdiction of the Executive Magistrate under section 145, Criminal Procedure Code in spite of the stay orders. A perusal of the judgments of the above referred to six cases shows that *R. H. Bhutani* and *Sajjan Singh's* cases were not brought to the notice of the Hon'ble Judges deciding those cases. Had these cases been brought to their notice, I am sure, the view taken by the Hon'ble Judges would have been different. With due respect to the Hon'ble Judges deciding the above referred to cases their view cannot be preferred to the view of the Supreme Court in *Sajjan Singh's* case (supra).

(14) After this decision, on a matter of law that the Magistrate has jurisdiction to continue proceedings under section 145, Criminal Procedure Code irrespective of the pendency of the cases between the same parties about the same subject matter and in spite of the *ad interim* orders referred to above I come to the facts of the case in hand. It is a case of the type of No. (iii) referred to above. Both these parties projected claims asserting their possession on the *khola*. In view of their conflicting claims the civil Court directed the maintenance of *status quo* during pendency of the case. On the report of the police the learned Sub-Divisional Magistrate, Patiala, on 1st February, 1972 found imminent danger of the breach of the peace and attached the *khola*. I do not find any illegality in the order or the proceedings to justify their quashing or even modification.

Shri Narinder Singh, learned counsel for the petitioner, stated that the statement of Dilbagh Rai recorded in the civil suit, shows that he is not in possession of the *khola*. That statement is not before this Court as it has not been placed on the file. I do not want to express any opinion about it. The petitioner, if advised, on the basis of that statement can approach the civil Court or the Sub-Divisional Magistrate for the modification of the orders passed by them.

(15) In *Sajjan Singh's* case (supra) the plaintiff had a weighty claim as compared to Mohinder Singh petitioner in this case as he

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had obtained an order restraining the opposite party from interfering with his possession. In spite of that the Supreme Court upheld the order of the High Court maintaining the order of attachment and the appointment of the receiver made by the Sub-Divisional Magistrate.

(16) For the foregoing reasons I find the revision to be without any force. The revision is dismissed. The case is sent back to the Sub-Divisional Magistrate, Patiala, for proceedings in accordance with the judgment of the Supreme Court in *Sajjan Singh's case* (supra). The parties, through their counsel, have been directed to put in appearance before the Sub-Divisional Magistrate, Patiala on 6th September, 1976.

*M. R. Sharma, J.*

(17) It is no doubt true that in some of the cases I fell in line with the view taken by P. S. Pattar, J., but later on I had to shift this stand, firstly, because *Sajjan Singh's case* (supra) decided by the Hon'ble Supreme Court of India was not brought to my notice and, secondly, because the realities of the situation so demanded. As pointed out by my learned brother K. S. Tiwana, J., section 145, Criminal Procedure Code, empowers the authorities concerned to take immediate preventive action in an emergency. Cases are not unknown in which in spite of an injunction issued by a civil Court the parties have tried to take forcible possession of land in disregard of the injunctive orders. It would be in the fitness of things if the police intervenes in such a situation either *suo motu* or on a report lodged by the weaker party. From a purely practical point of view, it would be proper not to curb this jurisdiction and to leave the aggrieved party to knock at the doors of the civil Courts to initiate proceedings for the disobedience of injunctive orders. At the same time, I would like to observe that jurisdiction under section 145, Criminal Procedure Code, should be exercised with extreme caution if a civil Court is properly seized of the case. With these observations, I agree with the judgment proposed by my learned brother K. S. Tiwana, J.

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*H.S.B.*