



Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL WRIT PETITION NO.62 OF 2023 (F)**

Shri. Nandu Keshav Bandodkar  
Son of late Keshav Vishnu Bandodkar,  
56 years, married, residing at  
House No. 644, Nagalli, Taliegao,  
Tiswadi, Goa.

...APPLICANT

**VERSUS**

1. State Represented by  
Panaji Police Station, Panaji, Goa.

2. Mr. Bernabe Dias e Sapeco,  
and his wife, R/o H.No. E-231,  
Rua 31<sup>st</sup> January road, Panaji

...RESPONDENT

Mr. Vallabh D. Pangam, Advocate for the Applicant.  
Mr. Shailendra G. Bhobe, Public Prosecutor for the  
Respondent No.1.  
Mr. Ajit R. Kantak, Advocate for the Respondent No.2.

**CORAM:- BHARAT P. DESHPANDE, J.**  
**DATED :- 27<sup>th</sup> August 2024**

**ORAL JUDGEMENT**

1. Rule.
2. Rule is made returnable forthwith.
3. The matter is taken up for final hearing with the consent of the parties.

4. Heard Mr. Pangam learned counsel appearing for the Petitioner; Mr. S. G. Bhobe learned Public Prosecutor for Respondent No.1 and Mr. Kantak learned counsel appearing for the Respondent No. 2.

5. The petition is filed challenging order dated 15.10.2022 passed by learned Additional Sessions Judge in Criminal Revision Application 27/2021 thereby remanding the matter back to learned Sub-Divisional Magistrate for recording evidence as mandated under Section 145(4) and 148 of Criminal Procedure Code (Cr.P.C. for short)

6. Mr. Pangam appearing for the Petitioner would submit that the impugned order passed by the learned Additional Sessions Judge is without considering the fact that the proceedings which were filed before the Sub-Divisional Magistrate in the year 2012, are no longer subsisting and the dispute which was then referred under Section 145 of Cr.P.C. needs to be closed.

7. Mr. Bhobe appearing for the State would submit that taking cognizance of the said complaint/chapter case is itself illegal as no observation is recorded by the concerned Sub-Divisional Magistrate before issuing the notice that he is

satisfied that there is possibility of breach of peace.

8. Mr. Kantak appearing for Respondent No. 2 would submit that the Petitioner never challenged the order of the Sub-Divisional Magistrate and initiation of the proceedings as well as issuance of notice and therefore such issue cannot be looked into in the present petition.

9. Since, the petition is filed under Section 482 of Cr.P.C., this Court is very much entitled to consider the aspect of maintainability of the said proceedings and that too after a period of 12 years.

10. The report was submitted by the Respondent No.1 to the concerned Sub-Divisional Magistrate by filing a chapter case under Section 145 of Cr.P.C. which is dated 19.06.2012. The Respondent No. 1 disclosed in the said chapter case that there is likelihood of breach of peace in the locality in connection of the dispute of ownership and cultivation of the paddy field. From the record which has been called from the office of the Sub-Divisional Magistrate, one thing is clear that after receipt of the chapter case along with the necessary documents, directly a notice under Section 145 of Cr.P.C. is issued to Party No. 1 and Party No. 2. This fact is also clear

from the roznama dated 17.07.2012. There is no observation of the concerned Sub-Divisional Magistrate that he is satisfied on perusal of the chapter case and the documents appended to it that there is a likelihood of breach of peace in the locality and therefore he is intending to issue notices to the respective parties.

11. The purpose of the proceedings under Chapter X of Cr.P.C. is only with regard to maintenance of public order and tranquillity. The proceedings under Section 145 of Cr.P.C. specifically deals with disputes as to immovable property.

12. Section 145(1) of Cr.P.C. clearly provides that the Executive Magistrate if satisfied from a report of the police officer or upon the information received that a dispute likely to cause breach of peace exists concerning any land or water or boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring parties concerned in such dispute to attend his court in person or through a pleader on a specified date and put in written statements of their respective claims as respects the facts of actual possession of the subject of

dispute.

13. Sub-Section 3 of Section 145 of Cr.P.C. further mandates that a copy of order shall be served in the manner provided by the Code for the service of summons upon such person or persons as the magistrate may direct and atleast one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

14. Sub-section 4 of Section 145 of Cr.P.C. further provides that the Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess a subject of dispute, peruse a statement so put in, hear the parties, receive all such evidence as may be produced and if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section 1, in possession of the subject dispute.

15. Thus, for invoking jurisdiction to entertain a chapter case under Section 145 of Cr.P.C. and on receiving a report from the Police Officer, the Magistrate is duty bound to apply his mind to the material placed before him and shall pass an order in writing stating the grounds of his belief and then requiring the parties to attend his Court. Along with the

notice, a copy of such order passed under sub-section 1 is required to be annexed and served on the parties concerned.

16. It is also a matter of record that proceedings under Section 145 are summary proceedings and to see that there is no breach of peace in the locality due to some dispute regarding possession. For that purpose, the Magistrate is also required to find out which party is in possession as on the date of order passed under sub-section 1 of Section 145 Cr.P.C.

17. As rightly pointed out by learned Public Prosecutor Mr. Bhobe, this aspect has been considered by various Courts including the Bombay High Court in the case of ***Naresh @ Narayan Murlidhar Kabra Vs. State of Maharashtra, 2001 All MR (Cri) 1847.***

18. In the case of ***Naresh (supra)*** one of the objections which has been raised challenging the order of the Sub-Divisional Magistrate is that there is no preliminary order passed in terms of the provisions contained in Section 145(4) of Cr.P.C. and having proceeded to dispose of the matter by directly passing of the final order. Para 9 and 10 of the said decision discusses the provisions of Section 145(1) of the

Code:

9. Section 145(1) of the Code provides that whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims relating to the fact of actual possession of the subject of dispute. Sub-section (3) provides that a copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute. Sub-section (4) further provides that the Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may

*be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of order made by him under sub- section (1), in possession of the subject of 10 dispute; provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1). Sub-section (5) further provides that nothing in the said section shall preclude any party so required to attend, or any other person interested, from showing, that no such dispute, exists or has existed; and in such case the Magistrate shall cancel his order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.*

*10. On plain reading of the provisions of Section 145 and the ratio of the decision in Laxman vs. Bahimkhan's and Vishwanath*



*Kashinath Virkar's cases, it is clear that drawing of preliminary order under Section 145(1) is sine qua non for initiating action under Section 145 of the Code. In the absence of such order, therefore, it cannot be held that any proceedings stated to have been initiated under Section 145 could be legal or valid. On that count alone, therefore, the impugned order is liable to be quashed and set aside.*

19. Thus, it is clear that drawing of a preliminary order under Section 145(1) of Cr.P.C. is *sine qua non* for initiating action under the said section. In absence of such order, it cannot be held that any proceedings started or initiated under Section 145 of Cr.P.C. could be legal or valid.

20. Similar view is expressed by learned Single Judge in the case of ***Nilesh Vs. Mahesh in Criminal Writ Petition No. 505/2022 decided on 27.04.2022 by the Aurangabad Bench.***

21. Considering the above decisions and on perusal of the record received from the Office of Sub-Divisional Magistrate, it is clear that there is no order passed by the Sub-Divisional Magistrate as provided under Section 145(1) of Cr.P.C. and thus, the entire proceedings conducted by the Sub-Divisional

Magistrate stands vitiated.

22. Mr. Kantak would submit that in the notice issued by the Sub-Divisional Magistrate to the concerned parties, there is an observation that there is possibility of breach of peace. According to Mr. Kantak, these observations in the notice could be considered as compliance of Section 145(1) of Cr.P.C.

23. I am unable to accept such submissions firstly that provisions of Section 145 (1) of Cr.P.C. in clear terms mandates that the Sub-Divisional Magistrate/concerned Executive Magistrate shall make an order in writing stating the grounds of his being so satisfied. These wordings would clearly go to show that a separate order is required to be passed by the concerned Executive Magistrate before issuing notice to the concerned parties.

24. Secondly, the notice issued to the parties no where records any findings of the concerned Executive Magistrate about he being so satisfied regarding breach of peace in the locality. The notice only contains what was stated by the concerned Police Officer about the possibility of breach of peace in the locality. Further, the notice says that the

Executive Magistrate is only satisfied that there exists a dispute of landed property in the area.

25. Existence of a dispute of the landed property would not in any manner give jurisdiction to the concerned Magistrate to entertain the proceedings under Section 145 of Cr.P.C., The only concern of the Executive Magistrate is along with such dispute of a landed property, there exists a dispute which is likely to cause breach of peace in the said locality. The powers of the Magistrate is only by way of preventive measures and to restore peace in the locality so as to maintain status quo as on the date of passing of order under Section 145 (1) of Cr.P.C. Thus, the notice issued to the parties observing that there exists a dispute of landed property cannot be sufficient enough to comply with provision of sub-section 1 of Section 145 of Cr.P.C.

26. Besides, the proceedings are required to be conducted in a summary manner and as early as possible so as to prevent any breach of peace in the said locality. If the proceedings are allowed to continue for 12 years as found in the present proceeding, there is absolutely no question of observing of breach of peace in the locality due to such

dispute. The parties are required to approach the Jurisdictional Court for redressal of their civil dispute. Thus, prolonging of these matters for years together is not the actual import of the act or the purpose. Even remanding the matter to the learned Executive Magistrate as done by the Revisional Court would serve no purpose. Accordingly, the impugned order needs interference under the extra ordinary jurisdiction of this Court.

27. For the reasons disclosed above, impugned order is quashed and set aside. The proceedings which were pending before the Executive Magistrate stands closed.

28. Rule is made absolute in above terms.

**BHARAT P. DESHPANDE, J.**