

Before A. S. Bains, J.

KEHAR SINGH,—*Petitioner.*

versus

BAL KISHAN ETC.,—*Respondents.*

Criminal Misc. No. 1560-M of 1978.

September 1, 1978.

Code of Criminal Procedure (2 of 1974)—Sections 145(1) and 146(1)—Attachment of property under section 146(1) on grounds of emergency—Proceedings initiated under section 145—Whether terminate on such attachment.

Held, that it is clear from the provisions of section 145(1) of the Code of Criminal Procedure 1973 that an order of attachment under section 146(1) of the Code can be made after the order of the Magistrate under section 145(1) is passed in a case of emergency. Section 146 does not contemplate any prohibition or bar or ban on the Magistrate to proceed on with the enquiry initiated by him under section 145 of the Code. Had it been the intention of the Legislature to withdraw the power of continuation of proceedings, the Legislature would have put the embargo to further proceedings under section 145 of the Code by the Magistrate after the order of attachment is made under section 146 of the Code. The provisions of section 145 clearly indicate that the Legislature in no manner has prohibited the Magistrate to proceed further after an order of attachment is made. Rather, the Magistrate is empowered to call upon the parties on a subsequent specified date and time and also require the parties to put in their claims and that the Magistrate is bound to continue with the proceedings initiated by him under section 145 of the Code and to conclude his finding. The use of the expression, "If the Magistrate at any time after making the order under sub-section (1) of section 145" in the opening part of section 146, at any rate, does not take away the jurisdiction of the Magistrate to continue with the proceedings under section 145. Thus on a combined reading of sections 145 and 146 of the Code, there is no prohibition, express or implied, to the effect that the proceedings under section 145(1) should come to an end when an order of attachment is made in case of emergency.

(Para 2).

Petition under Section 482 Cr.P.C. praying that :—

- (1) *the records of the case be summoned;*
- (2) *after perusal of the record the proceedings and the impugned orders be quashed, declaring the same to be without jurisdiction.*

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(3) any other order which this Hon'ble Court deems fit be passed, and further praying that during the pendency of this petition the operation of the impugned order may be stayed.

S. S. Rathore, Advocate, for the Petitioner.

N. S. Ahlawat, Advocate, and R. N. Aggarwal, Advocate, for the respondents.

JUDGMENT

A. S. Bains, J

(1) This petition is directed against the order dated November 24, 1977 of Executive Magistrate (Smt. Manju Gupta), Sonapat,—*vide* which she held that the respondents were entitled to remain in possession and vacated the order of attachment of the land in dispute. This order was affirmed by the learned Additional Sessions Judge (Sri Ram Saran Bhatia), Sonapat on March 21, 1978.

(2) The sole argument advanced by the learned counsel for the petitioner is that the Magistrate cannot pass the impugned order under section 145 of the Code of Criminal Procedure (hereinafter referred to as the Code) after she had passed the order of attachment under section 146(1) of the Code. Admittedly, the parties have also gone to the civil Court which has decided the matter in favour of the second party, that is the respondents in the present petition. The learned Executive Magistrate also,—*vide* the impugned order decided that the second party is entitled to remain in possession unless and until ejected in due course of law and the second party is also entitled to the money which had been collected by the Receiver from the income of the land in dispute during this case and the attachment order was vacated. The learned counsel for the petitioner relied upon certain authorities of Patna, Rajasthan and Delhi High Courts wherein it has been held that the proceedings under section 145 of the Code come to an end as soon as the order under section 146 of the Code is passed. These authorities are reported in *Md. Muslehuddin and another v. Md. Salahuddin*, (1), *Hakim Singh and others v. Girwar Singh and others*, (2) and *Mansukh Ram v. The State and another*, (3). The argument of the

(1) 1976 CrL. L.J. 1150 (Pat).

(2) 1976 Cr.L.J. 1915 (Delhi).

(3) 1977 Cr.L.J. 563 (Raj).

learned counsel precisely is that once an attachment is made under section 146(1) of the Code on the ground of emergency, the proceedings under section 145 come to an end. He puts special emphasis on the words appearing in section 146(1) of the Code "until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof" read with the provisions empowering such Magistrate to withdraw the attachment on his satisfaction as to the non-existence of likelihood of breach of peace with regard to the subject matter of the dispute. Under the (old) Code, the Magistrate was empowered under section 145(4) to attach the property in case of emergency either before an enquiry or after completion of enquiry. Under the present Code the first kind of attachment in case of emergency with the qualifying words 'pending his own decision in the case' have been obliterated. The Executive Magistrate, therefore, was empowered under the (old) Code to attach the land in case of emergency either before the commencement of the enquiry under section 145(4) or after the conclusion thereof. Under the present Code, a separate provision has been made empowering the Magistrate to attach the subject matter of the dispute and appoint a receiver under section 146(1) of the Code which is in the following terms:—

"If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute....."

From a reading of the above provisions, it is plain that attachment can be made under section 146(1), firstly, in case of emergency; secondly, if the Magistrate decides that none of the parties was then in such possession as is referred to in section 145, and thirdly, if he is unable to satisfy himself as to which of the parties was then in

possession of the land in dispute. Thus, it is clear that the conditions precedent for passing an attachment order are that there should be emergency and the positive decision of the Magistrate that none of the parties was in actual physical possession of the subject matter of the dispute and he is unable to satisfy himself as to which of the parties was in actual physical possession. The order of attachment was passed when the Magistrate passed the order under section 145(1) of the Code and considered it to be a case of emergency, although in the impugned order she has also stated that none of the parties is in possession of the land in dispute, but the attachment order was passed only after the passing of order under section 145(1) of the Code. Section 145(1) of the Code is in the following terms:—

“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 as respects the fact of actual possession of the subject of dispute.....”

From a reading of this provision, it is plain that before the order can be passed, the Magistrate must satisfy himself that there is likelihood of breach of peace between the parties and recording the grounds of his satisfaction in the order, require the parties concerned in such dispute to attend the Court on a specific date and time and to put in written statement with regard to the actual facts of the subject of dispute. Hence, it is clear from the provision that an order of attachment under section 146(1) of the Code can be made after the order of the Magistrate under section 145(1) is passed in a case of emergency. Section 146 does not contemplate any prohibition or bar or ban on the Magistrate to proceed on with the enquiry initiated by him under section 145 of the Code. In my considered opinion, had it been the intention of the Legislature to withdraw the power of continuation of proceedings, the Legislature would have put the embargo to further proceedings under section 145 of the Code by the Magistrate after the order of attachment is made under section 146 of the Code. The provisions of section 145

clearly indicate that the Legislature in no manner has prohibited the Magistrate to proceed further after an order of attachment is made under section 146 of the Code. Rather, the Magistrate is empowered to call upon the parties on a subsequent specified date and time and also require the parties to put in their claims and that the Magistrate is bound to continue with the proceedings initiated by him under section 145 of the Code and to conclude his finding. The use of the expression "If the Magistrate at any time after making the order under sub-section (1) of section 145" in the opening part of section 146, at any rate, does not take away the jurisdiction of the Magistrate to continue with the proceedings under section 145. Once a Magistrate proceeds under section 145(1), it is natural and reasonable to hold that the law gives him jurisdiction to conclude the proceedings under section 145 of the Code unless, of course, there is prohibition or embargo expressly put by the Legislature not to proceed on with it. On a combined reading of sections 145 and 146 of the Code, I do not find any such prohibition express or implied that the proceedings come to an end no sooner than an order of attachment is made in case of emergency. In *Kshetra Mohan Sarkar v. Paran Chandra Mandal*, (4), it has been held by their Lordships of the Division Bench as under:—

"A proceeding under Section 145 of the Code does not come to an end after an order of attachment is made under Section 146(1) of the Code on the ground of emergency. 1976 Cri.L.J. 1150 (Pat); 1976 Cri.L.J. 1915 (Delhi); 1977 Cri.L.J. 563 (Raj), Dissented from, 1977 Assam LR 58 overruled.

* * * *

The use of the expressions in Section 146(1) is the indicative of the commencement of an order of attachment and nothing more. The use of expressions in the opening part of Section 146, at any rate, do not take away the jurisdiction of a Magistrate to continue with the proceeding is clear and apparent. On the other hand they merely indicate the date of commencement of an order of attachment.

(4) 1978 Cr. L.J. 936 (Gauhati).

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Therefore, when a Court is allowed to proceed on with a proceeding it is natural and reasonable to conclude that the law gives it jurisdiction to conclude the proceeding.”

I am fully in agreement with the proposition of law enunciated by their Lordships of the Division Bench of the Gauhati High Court. In this authority, the authorities relied upon by the learned counsel for the petitioner have been noticed.

(3) For the reasons recorded above, I hold that the jurisdiction of the Magistrate is not ousted to continue the proceedings under section 145 of the Code after an order of attachment is passed under section 146(1) of the Code. The words “at any time” occurring in section 145 indicate that the order of attachment can be passed either after the order passed under section 146(1) or after the conclusion of the proceedings under section 145(4) of the Code. There is no embargo on the Magistrate to pass any order regarding possession after the attachment order is passed. The view I am taking is also supported by an earlier decision of our own High Court, reported as *Satguru Jagjit Singh etc. v. Jeet Kaur etc.* (5), wherein it is held as under:—

“...that attachment under section 146(1) of the New Code does not lead to the termination of the proceedings under section 145 and the Magistrate who has passed a preliminary order under section 145(1) of the Code has a right to proceed with the case and in view of the statement of the parties and the evidence led before him has to determine the possession in the light of the provisions of section 145(4) of the Code.

...”

(4) For the reasons recorded above, this petition fails and is dismissed.

N. K. S.