

“9. In the present case, the impugned F.I.R. was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster.”

20. In the present case, the base case was registered under Sections 60/63 the Excise Act and Sections 419, 420, 307, 467, 468, 471 IPC in which charge-sheet was filed on 14.02.2020 and there was no material to show that base case, in the present case, comes within the purview of the Gangster Act though the same is punishable under the Excise Act as well as IPC and the charge sheet was filed more than three years back, therefore, bar of proviso of Rule 4(2) of the Gangster Rules is applicable and the petitioner cannot be named as a member of a gang on the basis of base case mentioned in the gang chart in which charge-sheet has been filed.

21. However, it is observed that if an earlier occasion the Gangster Act was imposed against a person and charge-sheet was filed then any subsequent illegal activities falling within Sub-section (i) to (xxv) of Clause (b) of Section 2 of the Gangster Act would come within the purview of the Gangster Act, if there is other

supporting material regarding his involvement in the activities of a gang and in that case the Gangster Act can be imposed, even after three years.

22. The impugned FIR is registered u/s 3(1) of the Gangster Act without mentioning the corresponding provision of Section 2(b) of the Gangster Act, therefore, the same is illegal in view of the law laid down in the case of **Asim @ Hassim (supra)**

23. In view of the above, the present petition is **allowed** and the FIR dated 29.02.2024 along with its gang-chart is hereby quashed.

(2024) 10 ILRA 299
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 18.10.2024

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Revision No. 2998 of 2023

Vinod Kumar Shukla & Anr. ...Revisionists
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Revisionists:

Sri Ajay Kumar Jagdish, Sri Ayush Mishra, Sri Nitin Sharma, Sri Prabha Shanker Mishra, Sri Ram Kumar Dubey

Counsel for the Respondents:

G.A., Sri Ram Sajiwan Mishra, Sri Tarun Kumar Shukla

Criminal Law - Code of Criminal Procedure, 1973 - Section 397/401-

Revisionist moved an application under Section 145 Cr.P.C. -claim as owner in possession in disputed land-opposite parties were trying to grab the disputed land and prepared to engage in violent acts- initiated action under Section 107, 116 Cr.P.C. - the same is liable to be attached in proceedings under Section 145 Cr.P.C- finding of fact recorded by learned trial court cannot be disturbed or replaced by new finding of fact by revisional court unless the same appears to be perverse. - the finding is based on a due appreciation of material on record-Civil Suit is pending between the parties –but no ad-interim order or temporary injunction has been passed therein-The learned Executive Magistrate has released the property in dispute in favour of opposite party, until a contrary order or an order with regard to title and possession of disputed property is passed by a competent court-no infirmity in the impugned order.

Revision dismissed. (E-9)

List of Cases cited:

1. Munshi Ram Vs St. of Raj., through Pp Nemaram son of Bhagirath Ram, Tehsil Maulasar, District Didwana Kuchaman Raj vide - S.B. Criminal Misc. (Pet.) No.4923 of 2024

2. Ram Sumer Puri Mahant Vs St. of U.P. & ors. reported in 1985 (1) SCC 427

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Instant Criminal Revision has been preferred under Section 397/401 Cr.P.C. against the final order dated 03.04.2023 passed by Up Zila Magistrate, Tehsil Machalishahar, District Jaunpur in Case No.02711 of 2018 (Vinod Kumar Vs. Arun Kumar) under Section 145 Cr.P.C., with prayer to set-aside the impugned order and directing the opposite party No.4 to 6 not to interfere in peaceful possession of the applicants in land in dispute which is Abadi Land situated at village Hemapur Tarathi,

Police Station Mungra Badshahpur, Tehsil Machhali Shahar, District Jaunpur.

2. Heard learned counsel for the revisionist and learned A.G.A. for the State-respondent and perused the material available on record.

3. On perusal of record it appears that the applicants/revisionists Vinod Kumar Shukla and Anil Kumar Shukla sons of Ram Deo Shukla moved an application under Section 145 Cr.P.C. before the Up Zila Magistrate, Machalishahar, District Jaunpur against present respondent Nos. 4,5 and 6 with averments that the disputed land originally belonged to Ram Pyari Devi wife of Madhav Prasad, who was owner in possession of the land in dispute during her life time. She executed a Will deed in favour of the mother of the applicants, and after death of Ram Pyari, the mother of the applicants/revisionists namely Raj Kali entered thereon as owner in possession. The opposite parties were trying to grab the disputed land and for that purpose they were prepared to engage in violent acts. The local police apprehending the breach of peace, initiated action under Section 107, 116 Cr.P.C. in the matter, as there was constant threat of breach of peace in regard to disputed land and the same is liable to be attached in proceedings under Section 145 Cr.P.C, otherwise any serious incident is likely to occur. The boundary marks on disputed land are given a foot of land and the application shows which may be read as under:-

East- House and Shahan Ram Dev
West- Kharanja road and Shivam
Sundaram Jogi Beer Baba Mandir
North- Pucca House of Rajkali
South- Pucca House of respondent
No.2

4. The chalani report was filed by local police also on 15.04.2018, in which it is stated there is land dispute between the parties with regard to abadi land, and both parties are claiming their title and possession thereon. The land in chalani report is marked by red lines and denoted as ABCD. In chalani report also a site plan is shown, which is similar too that shown in application filed by applicants Vinod Kumar Shukla and others in application under Section 145 Cr.P.C. The police officer also prayed for attachment of land in dispute to avoid any incident of breach of peace, which is likely to be caused due to tension prevalent on the spot. The opposite parties filed written statement in which they averred that the application moved by applicants is liable to be dismissed. The chalani report filed by local police is against the position appearing on spot. The parties belonged to same clan and blood are relatives. The ancestral land was partitioned between the parties and they are in possession of their respective share on this part. The opposite parties got an old Khaprail house in a portion which was in dilapidated condition and they constructed the pucca dalan after demolishing the old structure, and they have been using the pucca dalan since time of their father. In fact, the land marked by ABCD letters in chalani report has never been in dispute, because on this land trees are planted and pillars of construction of Varandah are lying. A civil suit is also pending with regard to land in dispute and for that reason also the proceedings under Section 145 Cr.P.C. are not maintainable.

5. The applicants also took stand that in their pleadings before the Executive Magistrate that according to genealogical table the opposite parties are owner of 1/4th share of property. Smt. Ram Pyari died in

the year 2011 and thereafter mother of the applicants namely Rajkali became owner in possession of the property left by Smt. Ram Pyari on the basis of registered Will deed. Opposite parties are not in any manner concerned with the property inherited by the mother of the applicants through Will deed from Smt. Ram Pyari. The notice was issued after receiving report from police station on 25.04.2018, some interim orders were passed on 26.03.2018 and 03.05.2018 by learned Executive Magistrate. When opposite parties, with intent to grab the possession of the land in dispute, were trying to raise pillars etc. to raise a Varandah in the land in dispute. The opposite parties also filed a Civil Suit for cancellation of Will deed propounded by the applicants and also filed a suit for permanent injunction separately.

6. Learned Executive Magistrate after considering the pleadings and submissions of the parties observed that a Civil Suit has been instituted by opposite parties which is cited as (Varun Kumar and another Vs. Ram Deo and others) in the court of Civil Judge (Junior Division) Jaunpur, which is pending, but the Civil Suit has been instituted after filing of application under Section 145 Cr.P.C. before the Executive Magistrate. The second chalani report was also filed by P.S. concerned under Section 145 Cr.P.C. 11.02.2020 which is without any logic and same is liable to be dismissed.

7. On perusal of chalani report dated 11.04.2018 filed by P.S. concerned and site plan given therein, it is obvious that disputed land ABCD lies at the door of opposite parties. The pillars raised by opposite parties is also shown in disputed land ABCD in chalani report dated 11.04.2018. When opposite parties were

trying to grab the possession of dispute land by raising pillars etc. the dispute arose. The opposite parties moved complaint to several competent officials by registered post on 19.11.2017 having been perturbed by actions of opposite parties, but no action was taken thereon. Thereafter this application was moved before the court of Executive Magistrate by applicants to restrain opposite parties to take possession of the land in an illegal manner, as stated by applicants in their pleadings. However, they have also stated that opposite parties were never in possession of land in dispute, therefore both the averments are self-contradictory.

8. According to applicants the dispute occurred prior to 19.11.2017, it shows that opposite parties were in possession of land in dispute sixty days earlier to commencement of proceedings. The applicants have claimed themselves as owner of the land in dispute, but the same has not been decided in proceedings under Section 145 Cr.P.C. but only question has been determined.

9. Learned Magistrate gave a finding to the effect that opposite parties were in possession of the land in dispute which is sixty days earlier to initiation of action under Section 145 Cr.P.C. Therefore, any dispute regarding title of land in dispute between the parties can only be decided by instituting a Civil Suit. With these findings learned Executive Magistrate released land in dispute in favour of the opposite parties till any order with regard to title of disputed land/possession is decided by competent court. Learned Magistrate also directed the opposite parties in the impugned order that until any adjudication regarding title of land in dispute is made, they would not raise any new constructions

on the spot, nor they will change status of the spot. The Station House Officer concerned has also been directed that in case any apprehension of breach of parties is found between the parties, the punitive action be taken against them.

10. Learned counsel for the revisionist submits that the learned Executive Magistrate has travelled beyond jurisdiction while passing the impugned order in favour of the opposite parties. Inasmuch as, he has included the house also in the impugned order, which is not disputed. It is admitted fact that there is only dispute of Sahan land lying between before the house of Ram Pyari Devi and newly constructed house of opposite parties. The applicants have not stated in their application under Section 145 Cr.P.C. that no pillar has been raised by opposite party on the land in question. Inasmuch as in chalani report dated 15.04.2018 the local police has also not stated any where about existence of pillars on the land in dispute, but nevertheless the existence of pillar has been assumed by learned Executive Magistrate in the impugned order. He also submits that learned Magistrate has not only released the disputed land in favour of opposite parties, but also issued an order in the nature of temporary injunction, which is without jurisdiction. Learned Executive Magistrate is not empowered to pass any order in the nature of injunction proceedings under Section 145 Cr.P.C.. This was a fit case for issuing attachment order with regard to land in dispute, but instead a release order has been passed in favour of opposite parties, which is not sustainable in the eyes of law.

11. Even due procedure has not been observed while deciding the case finally. No evidence has been recorded

during the proceedings under Section 145 Cr.P.C. and the case has been decided only on the basis of the pleadings of the opposite parties. No ad-interim injunction has been granted in Civil Suit filed by the opposite parties seeking relief of permanent injunction. The finding of possession of opposite parties on the land in dispute is against the position of spot and not supported by any cogent evidence.

12. There is gap of period of more than six months between conclusion of arguments by the parties and passing of the impugned judgment by learned Magistrate and in this period of six months no re-arguments were heard.

13. Learned counsel for the revisionists placed reliance on a judgment of High Court of Judicature Rajasthan at Jodhpur in **Munshi Ram Vs. State of Rajasthan, through Pp Nemaram son of Bhagirath Ram, Tehsil Maulasar, District Didwana Kuchaman Raj vide order dated 29.07.2024 in S.B. Criminal Misc. (Pet.) No.4923 of 2024.** The petitioner was aggrieved by an order passed by Additional Session Judge in Criminal Revision No.7 of 2024, whereby the revision petition filed by respondent No.2 was allowed. In exercise of revisional jurisdiction, the order dated 28.09.2024 was passed under Section 145/146 Cr.P.C. by learned Sub Divisional Magistrate by which, he had provisionally attached disputed Khasra No.274 and appointed a receiver as an interim measure was set-aside. The High Court dismissed the petition and held that there were no grounds to interfere. The High Court observed as under:-

“8. Once civil litigations regarding the property are already pending, the

Magistrate under Section 145 Cr.P.C. should not delved into making finding on the civil/possession/title rights of the parties concerning the property. The purpose of Section 145 is to maintain public peace and order when there's a dispute over possession of property, and not to already been filed regarding the property, making it thus unnecessary for the SDM to interfere in the matter.

9. Once the civil proceedings are concededly in progress, the SDM's role is limited, and issuing orders like appointment of receiver amounts to overstepping the boundaries of peace, not to settle property disputes, which is within the purview of civil courts. Instead, if there is a need to prevent breach of peace, the Magistrate can take measures under Section 107 of the Cr.P.C.”

14. Learned counsel for the revisionists also placed reliance on a judgment of Hon'ble Supreme Court in **Ram Sumer Puri Mahant Vs. State of U.P. and others reported in 1985 (1) SCC 427**, in which it is held that there is no scope to doubt or dispute the position that the decree of Civil Court is binding on the criminal court in a matter like one before us in a proceedings under Section 145 Cr.P.C. that parallel proceedings should not be permitted to continue and the event of decree of civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders, such as injunction or appointment of receiver for adequate protection of the property during the pendency of the dispute. Multiplicity of litigation is not in the interest of the parties, nor should public time be allowed to be wasted over meaningless litigation.

15. Learned counsel for the respondent No.2 submitted that the land in dispute stands at the door of the house of respondent Nos. 4,5 and 6, which is their sahan land and was allotted to the share of father of respondent Nos. 4 to 6 in family settlement which reached about 50 years ago. Smt. Ram Pyari who belonged to the khandan of the parties had no right to bequeath the sahan land of the respondents in favour of the mother of the applicants, and on the basis of said will deed the claim of the applicants/revisionists have acquired no title whatsoever on the land in dispute and same was never in possession of the applicants.

16. The impugned order is based on facts admitted by the parties in their pleadings and well within jurisdiction of the learned Executive Magistrate. The temporary injunction has been granted in the interest of justice and the revisionists are not likely to suffer by temporary injunction order, the opposite parties themselves are enjoined to maintain statusquo on the spot.

17. Leaned A.G.A. submitted that there is no irregularity or illegality in the impugned order passed by learned Executive Magistrate, even Naib Tehsildar in his report dated 05.09.2020 addressed to Zila Adhikari has stated that the disputed site is 3ft. above from the surface. It is stated therein that the spot where earth work was done by defendant Tarun Kumar tension is prevalent between the parties. There is no problem of water evacuation on the spot, as the same is on height. However, he admitted in his report the prima facie there was no occasion of earth work on the spot and due to this act there is apprehension of dispute.

18. Learned counsel for the respondent Nos. 4 to 6 further submitted that the revisionists never appeared in both the civil suits filed by the respondents, even after publication of notice, in spite of the fact that they are well within knowledge of both the civil suits.

19. Learned counsel for the revisionist submitted that the above mentioned order of Rajasthan High Court (supra) pertains to a provisional attachment and appointment of receiver order passed in respect of identical plot by Sub Divisional Magistrate, as an interim measure under Section 145/146 Cr.P.C. Whereas in the present case final order has been passed under Section 145 Cr.P.C. by Up Zila Adhikari in respect of land in dispute with a finding that on the basis of evidence on record the possession of second party (Arun Kumar) is found prior to 60 days next before the date of initiation of proceedings with regard to possession. First party has failed to established his possession on undisputed house by evidence, if there is any dispute regarding the title the parties can seek appropriate relief by instituting a civil suit before the competent court. In the opinion of Magistrate the disputed land is liable to be released in favour of second party who is found to be in possession of the same.

20. The relevant provisions of Criminal Procedure Code of 1973 is applicable to present case may be produced as under:-

Section 145- Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) 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.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference of 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 the order made by him under sub-section (1), in possession of the subject of 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 this order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said 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.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed. (b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for

the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Section 146- Power to attach subject of dispute and to appoint receiver

1. 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.

2. When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit. Appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908);

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any civil Court, the Magistrate—

1. shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the civil Court and shall thereafter discharge the receiver appointed by him;

2. may make such other incidental or consequential orders as may be just.

21. The aforesaid statutory provisions provides that Magistrate can exercise powers under Section 146 Cr.P.C. on satisfaction of following conditions:-

(I) At any time after making an preliminary objection under sub-Section 1 of Section 145 Cr.P.C. considers that

(1) 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.

22. After forming the opinion as envisaged under Section 146 (1) Cr.P.C. 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;

23. The 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.

24. Although in the impugned order the learned Magistrate has referred on some places “disputed land” and another place “dispute house”, but there is no dispute between the parties that dispute is with regard to Abadi land which is shown as per boundary marks in application under Section 145/146 Cr.P.C. dated 29.01.2018 by the applicants Vinod Kumar Shukla and Anil Kumar Shukla, the present revisionists. The parties to dispute belonged to same clan and they have been co-sharers. Applicants/revisionist claim their title over land in dispute on the basis of a will deed executed by late Pyari Devi in favour of their mother and respondents claimed that the said land was allotted to their share in partition of ancestral property.

25. It is trite law that a finding of fact recorded by learned trial court cannot be disturbed or replaced by new finding of fact by revisional court unless the same

appears to be perverse. On a perusal of impugned order passed by Up Zila Magistrate (SDM), the finding of fact regarding possession of respondent Nos. 4 to 6 in disputed land cannot be said to be perverse as it is based on a due appreciation of material on record. Although a Civil Suit No.572 of 2018 Varun Kumar Vs. Ram Deo is pending between the parties in the court of Civil Judge (JD) Jaunpur, but no ad-interim order or temporary injunction has been passed therein. This Civil Suit was instituted by present respondent No.5 after initiating present proceeding under Section 145/146 Cr.P.C. at the instance of revisionist. Only due to the fact that civil court did not find it proper to issue an ad-interim ex parte injunction in favour of the plaintiff (present respondent No.5) in civil suit, it cannot be inferred that the civil court had not found him in possession at the outside. The grant of ex parte injunction is not a rule but an exception and it can only be granted in cases where all the necessary parameters prima facie find support, for grant of ex parte injunction. In present revision the revisionists have themselves sought a consequential relief in the nature of injunction.

26. The learned Executive Magistrate has released the property in dispute in favour of opposite party, until a contrary order or an order with regard to title and possession of disputed property is passed by a competent court. I find no infirmity or illegality or perversity in the impugned order 03.04.2023 passed by Up Zila Magistrate, Tehsil Machalishahar, District Jaunpur. The impugned order will be subject to any order passed by civil court in relation to property in suit. The revision is devoid of merit, and is liable to be dismissed.

27. The revision is **dismissed**.