

**(1977) 03 OHC CK 0017**

**In the Orissa High Court**

**Case No : Criminal Revision No. 141 of 1976**

Gangadhar Sahu and Others

APPELLANT

Vs

Ramjilal Majhi and Others

RESPONDENT

**Date of Decision : 31-03-1977**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 146

**Citation : (1977) 44 CLT 20**

**Hon'ble Judges : N.K. Das, J**

**Bench : Single Bench**

**Advocate : S.C. Mohapatra and A.K. Patnaik, for the Appellant; B.K. Behura, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

N.K. Das, J.—Second party Nos. 1, 3 and 4 in proceeding u/s 145, Code of Criminal Procedure are Petitioners. The sale point raised by Mr. Mohapatra, the learned Counsel for the Petitioners, is that once the Magistrate has attached properties in dispute in a proceeding u/s 145, Code of Criminal Procedure and has appointed a receiver, it is incumbent on his part to continue the attachment until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. He can also appoint a receiver u/s 146, Code of Criminal Procedure, if civil Court has not appointed any receiver. It is also admitted by the learned Magistrate in his judgment that as there was breach of the peace between the parties, the lands were attached and were kept in charge of a receiver.

2. From the ordersheets, it appears that by his order dated 11-2-1975. the learned Magistrate passed order u/s 144, Code of Criminal Procedure ex parte on the ground that there was emergency. By order dated 11-4-1975, he has converted the proceeding to one u/s 145, Code of Criminal Procedure and has also ordered for attachment of the subject of dispute and appointment of a receiver. Both the orders read together would show that the learned Magistrate

was satisfied that there was emergency and he had to attach the property in dispute and appoint a receiver.

3. A Division Bench of this Court in *Dandapani Pala v. Madan Mohan Pala* 1977 C.L.R. 305, has held that when an order is passed on the first of the contingencies as appearing u/s 146, Code of Criminal Procedure the proceeding u/s 145 of the Code does not survive and an inquiry as envisaged in that section is not to be undertaken. The Division Bench in the above case has also taken notice of two other Single Judge decisions of this Court and has confirmed those decisions. The Division Bench has also approved one decision of the Allahabad High Court, as appears in para 7 of the judgment. It would thus appear that the consistent view of this Court is that once the Magistrate attaches the property and appoints a receiver, he has no jurisdiction to inquire into the matter. Mr. Behura, the learned Counsel for the opposite parties, relies on a Single Judge decision of the Allahabad High Court in *Ram Adhin Vs. Shyama Devi and Others*, , in which a different view has been taken. When a Division Bench of this Court has confirmed the previous Single Judge decisions on the point, I am bound by the decision of our High Court. Moreover, in the decision cited by Mr. Behura, the previous decision of the Allahabad High Court has not been noticed. On the aforesaid analysis, I hold that the learned Magistrate has illegally exercised his jurisdiction in inquiring into the matter and giving ultimate finding in the proceeding u/s 145, Code of Criminal Procedure. Accordingly, the decision of the Court below cannot be sustained.

4. In the result, the revision is allowed. The order of the Court below is set aside. The case is remanded back to the learned Magistrate to take action according to the provisions of Section 146, Code of Criminal Procedure from the stage of the preliminary order. Records be sent back immediately.

Revision allowed.