

(1981) 12 BOM CK 0006

In the Bombay High Court

Case No : Criminal Application No. 1538 of 1981

Khalil-Ur-Rehman

APPELLANT

Vs

Zafar-Abid and Another

RESPONDENT

Date of Decision : 08-12-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145(1), 146, 146(1), 482
Penal Code, 1860 (IPC) — Section 114, 323, 341, 448

Citation : (1982) 1 BomCR 305

Hon'ble Judges : R.S. Bhonsale, J

Bench : Single Bench

Advocate : V.H. Gumaste and H.H. Keswani, for the Appellant; M.K. Joshi and N.S. Jaywant, S.M. Gupte, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Bhonsale, J.—One Khalil-Ur-Rehman, original party No. 2 has filed this Criminal application challenging the order passed by the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla in Notice Case No. 661/N of 1981, directing the officer-in-charge of Kurla Police Station or any other officer deputed by him to draw a panchanama about the articles in the disputed premises, viz., Block No. D-11, 1st floor of Building No. 4, styled as "Madhur" of the Bombay Taximen's Co-operative Housing Society, Lohia Nagar, Agra Road, Kurla, Bombay-400 070 and keep the premises under seal u/s 146 of the Criminal Procedure Code. The officer was also directed to submit report as soon as the premises were put under seal. This order was passed by the learned Additional Chief Metropolitan Magistrate on September 8, 1981, against which the present petition is filed in this Court on September 10, 1981, i.e. immediately after two days. This Court, while admitting the petition, granted interim stay of the execution of the order passed by the learned Additional Chief Metropolitan Magistrate pending the admission, and, thereafter the petition came to be admitted and interim stay issue was confirmed. At the time of admission, the Counsel for the petitioner made a statement before this Court that during the

pendency of this petition, the petitioner will not induct any outsider in the premises or deal with the same in any way, in any manner nor will they remove any article there from.

2. The petition was directed to be heard on 5th October and thereafter, the petition came up for hearing and final disposal before this Court. The petitioner as well as the respondent have filed further affidavit and certain other documents. The petitioner has also annexed to this petition a copy of the judgment delivered by Kotwal, J., Criminal Revision Application No. 667 of 1979.

3. The petitioner has challenged in substance the order of attachment and sealing passed by the learned Additional Chief Metropolitan Magistrate, In order to appreciate the rival contentions on both the sides, the facts leading to the passing of the preliminary order u/s 145-G(i) as well as the order for attachment and sealing passed u/s 146 need to be referred to. The learned Additional Chief Metropolitan Magistrate has, in his order dated September 8, 1981, dealt with the facts of this case exhaustively. It is not necessary to deal with all these facts in detail except to briefly refer to some of the salient features of this case.

4. There is no dispute before me that the premises in dispute belonged to Khalil-Ur-Rehman, the petitioner in this petition. The building No. 4 is a co-operative housing society known as Bombay Taximen's Co-operative Housing Society. The petitioner was a member of the said society and was allotted the present disputed premises in November 1980. It was the case of respondent No. 1 in the Magistrate's Court that since the beginning, he was in possession as a tenant of this block from November 1980 and was in occupation of the premises from November 1980, to May 14, 1981 before the incident in question of forcibly dispossession has taken place. In the application u/s 145-G(i) respondent No. 1 had stated that after the commencement of his tenancy, he had installed two electric fans, brought refrigerator, television, steel cupboard, fish, aquarium and necessary furniture and had also fixed other fittings in the premises. He had also taken ration card on the address. During the census also, he was in possession of the block and his name was in voters' list. He used to pay rent at the rate of Rs. 200/- per month to the present petitioner by cheque. He had also received bills from the society in respect of the block and he produced such a letter dated May 4, 1981 received by him on behalf of the present petitioner. While respondent No. 1 was so staying in the premises, his father who was also staying with him met with an accident on April 24, 1981 and has died on April 26, 1981 and a Police Officer of the Kurla Police Station had in fact come to the premises to record the statement in the accident case prior to this incident in question had taken place.

5. It is alleged by respondent No. 1 in his original application that the petitioner Khalid-Ur-Rehman came on May 10, 1981 into the premises in question along with two persons and asked him to hand over the vacant possession stating that one person who was with him wanted to purchase the block. Respondent No. 1 refused. This enraged the petitioner and he threatened to drive the respondent

away from the premises. On May 14, 1981 at about 9-30 a.m. the petitioner along with some hirelings and one tempo arrived at the premises in question. He first entered in the premises and was followed by others, and he immediately started threatening the respondent to vacate and they were threatened with dire consequences. According to the respondent, the petitioner's started throwing his belongings out of the balcony and started making valuables such as television set, refrigerator, steel cupboard, etc., outside the room in the passage. The wife of respondent No. 1 was detained in the kitchen and when the respondent resisted, he was assaulted and was practically detained. While this commotion was going on, one Suresh went to the Kurla Police Station and reported the matter to the police. One constable was sent along with the said suresh and when the petitioner saw the constable approaching, he hurriedly sent out the hirelings but by that time, the petitioner had already practically taken all the belongings of the respondent outside the block and some were thrown in the compound. As the situation was alarming, the respondent took his wife and the child with him after putting the lock on the door of the premises and went to the Police Station. When the respondent returned with the officer of the premises, he found his lock was broken open and the latch on which the lock was put was also broken and the petitioner entered the premises along with his few articles and closed the premises from within. Police made a panchanama of the situation according to which several articles belonging to the respondent were lying outside the premises. According to the respondent, the petitioner by his high-handed arrogance and force with the help of the hirelings kept the respondent outside the premises and he had to live out of the compounds of the building for the day with his family members. The police thereafter registered an offence against the petitioner and one more person for having committed offence punishable under sections 341, 448, 323 read with section 114 of the Indian Penal Code.

6. On the next day, i.e. on May 15, 1981, the respondent, who shall hereafter be described as party No. 1 filed an application u/s 145(1) of the Criminal Procedure Code and the learned Additional Chief Metropolitan Magistrate issued an order u/s 145(1) which reads as follows :---

"Issue notice to respondent to show cause why preliminary order passed u/s 145(1) Criminal Procedure Code should not be confirmed and parties directed to file their respective written statements in respect of the fact of actual possession of the premises at flat 4/D-11, Madhur Building".

On the same day, party No. also filed an application u/s 146(1) of the Criminal Procedure Code for attachment and sealing of the premises. In that application, it was stated that there cannot be any manner of doubt that the case one of grave urgency and emergency. The party No. 2 (i.e. the petitioner herein) has shown such callous disregard to law and order and has manifestly taken the law in his own hands to the detriment and prejudice of Party No. 1. Besides the existing situation which was likely to throw a flood of light to his application

which may be changed or altered to his prejudice. According to Party No. 1 it was necessary and expedient in the interest of justice that pending the disposal of the application, the premises in question may be ordered to be sealed. It was further prayed that the Court of the learned Metropolitan Magistrate be pleased to direct to remove Party No. 2 and his agents from the premises in question. After the filing of this application on May 15, 1981, party No. filed a further affidavit on August 25, 1981, that Party No. 2 had inducted one Barsat Khan in the premises and the articles belonging to party No. 1 which was removed at the time of dispossession are being removed therefrom. Party No. 2 was also trying to fix some fittings in the premises. Party No. 2 also altered the situation in the premises itself. Party No. 1 had gone to the premises in question on August 20, 1981 and some stranger was found staying in the premises in question. While Party No. 1 was going on the stair-case in the premises in question, he was obstructed by the said Barsat Khan and was told that he would not be allowed to go to the premises in question. Consequently, party No 1 could not go to the premises. According to party No. 1 this conduct on the Party No. 2 and his hirelings in the premises showed scant respect for law and order of the Court, and it would be detrimental to permit the premises in occupation of Party No. 2. Party No. 2 also filed affidavits denying all these allegations and explaining the true situation as existing. On August 25, 1981 itself, the learned Additional Chief Metropolitan Magistrate passed the following order :---

"Heard parties today. The petitioner urged that status quo is being changed and fans fixed by him are changed and removed. The Inspector in charge of Kurla Police Station to depute an officer to the disputed premises to draw panchanama about the condition of the premises with the fixtures id any and if there are any marks of recent, removal of fans etc., and to go report within there days from this days.

Parties are allowed to remain present."

7. It needs to be mentioned here that though the notice was issued by the learned Magistrate to Party No. 2 on May 15, 1981 itself, for one reason or the other, these proceedings dragged on for a period of nearly 31/2 months before which the order of attachment and sealing came to be passed on September 8, 1981. After issuing the notice by the learned Additional Chief Metropolitan Magistrate on May 15, 1981, there were as may as 20 adjournments. Party No. 2 filed its affidavit and written statement in response to the submission of party No. 1 u/s 145 of Criminal Procedure Code on June 29, 1981. Thereafter, there were several adjournments and its seems that the Magistrate on his own had adjourned the matter number of times and both the parties had asked adjournments on two or three occasions. Ultimately, the present impugned order came to be passed on September 8, 1981.

8. In this order, as stated above, the learned Additional Chief Metropolitan Magistrate has considered all the documents filed by both the parties and discussed them in detail in his order from paragraph 6 onwards, he has discussed

why he was passing the order of attachment and sealing. He also considered the case put up by Party No. 2 that it was a case either of joint possession or it was a case of Party No. 2 allowing Party No. 1 has with him. Party No. 2 has also put up a theory that in fact Party No. 1 has voluntarily left the premises or surrendered the premises and has taken out all the articles referred to in the panchanama drawn-up by the police. It was also stated that Party No. 2 had advanced Rs. 10,000/- to Party No. 1 for making alternative arrangements to enable him to take suitable premises and therefore, the incident as alleged by Party No. 1 never took place, that Party No. 2 never forcibly dispossessed Party No. 1 but Party No. 1 has voluntarily surrendered the premises in question. The case put up by party No. 1 was also considered by the learned Additional Chief Metropolitan Magistrate and he came to the conclusion that there was no substance in the alleged voluntarily surrender by party No. 1 and Party No. 2 advancing Rs. 10,000/- to Party No. 1 for obtaining alternative suitable premises. Ultimately, after discussing all the documents placed before the learned Additional Chief Metropolitan Magistrate by both the parties, the learned Magistrate came to the conclusion that the theory of joint possession set forth by Party No. 2 was not supported by any evidence on record. His further finding was that Party No. 1 was in possession of the premises in question till Party No. 1 was forcibly dispossessed on May 14, 1981. The learned Additional Chief Metropolitan Magistrate, therefore, believed in the documents produced by Party No. 1 and the correspondence produced by Party No. 1 which shows that he was received letters on the address of the premises in question. He also received the bills issued in the name of Party No. 2 in respect for the disputed premises dated May 4, 1981. The learned Additional Chief Metropolitan Magistrate also believed that the hirelings of Party No. 2 had come to the disputed premises bad suddenly entered into the premises and dispossessed Party No. 1. He further believed that after he had directed the police to visit the premises and draw up a panchnama, Party No. 2 had removed some fixtures while the proceedings were pending in his Court. He, therefore, after carefully going through the documents and after considering the circumstances connected with the case came to the conclusion that a grave urgency and emergency existed and that this was a fit case in which he should pass an order to put the premises under seal u/s 145 of the Criminal Procedure Code and, therefore, passed an order referred to above.

9. In challenging this impugned order, the learned Counsel appearing for Party No. 2 in this Court has urged the following grounds :

Firstly, he contends that the very fact that the impugned order came to be passed after a lapse of time of nearly 3 1/2 months shows that this was no a case of urgency or emergency as found by the learned Additional Chief Metropolitan Magistrate. According to him, the preliminary order was passed on May 15, 1981 and the jurisdiction was assumed on the basis that there was likelihood of breach of peace, thereafter, the police having registered offence against party No. 2 and the proceedings u/s 146(1) of the Criminal Procedure Code being pending in the Magistrate's Court, nothing would happen which

would give rise to a situation of urgency or emergency and if no urgency or emergency existed. The learned Additional Chief Metropolitan Magistrate had no jurisdiction to pass such an order of attachment and sealing of the premises. Mere likelihood of breach of peace will not be enough to exercise powers u/s 146(1). Reading section 145 and 146(1) makes it clear that emergency is something more than mere likelihood of breach of peace. Emergency, according to the learned Counsel, must not only exist when the application u/s 146(1) is made but when an order section 146(1) is passed by the learned Magistrate. According to the learned Counsel, it was well established that jurisdiction u/s 146(1). The likelihood of breach of peace must exist at the date of the preliminary order. Its existence is not necessary thereafter. On the other hand, emergency must exist at the date of the order u/s 145(1). Before the learned Magistrate can exercise his powers u/s 146(1) at the later date, there must be some evidence of serious breach of peace in between the two orders. The learned Counsel, therefore, contended that after passing the preliminary order while there was a likelihood of breach of peace on May 15, 1981, no events have taken place which would warrant the state of emergency in order to exercise powers u/s 146(1) and, therefore, according to him, the order of sealing and attachment was without any jurisdiction whatsoever.

10. As against these contentions, the learned Counsel Shri M.K. Joshi, appearing for party No. 1 has argued as follows :---

According to him, Party No. 1 was in possession of the premises in question on the date of the incident and party No. 1 was in forcibly dispossessed by Party No. 2. The wife of party No. 1 was manhandled and confined to the kitchen and her modesty was outraged. All the articles belonging to party No. 1 were physically removed and/or thrown out of the premises in question. When the police arrived for the first time, Party No. 2 and his hirelings ran away from the scene of offence. Even when Party No. 1 had gone to the Police Station to register a complaint, his lock put on the premises were forcibly broken and Party No. 2 had entered into the premises. The existence of large number of hirelings and some women and the presence of an Advocate at the time of the forcible entry of Party No. 2 shows the planning and pre-meditation and had indicated that the forcible possession was well arranged in advance and all the preparations were made for that purpose. The police had registered offence against Party No. 2 but had not registered an offence u/s 354 of the Indian Penal Code. Even after passing of the preliminary order, Party No. 2 had inducted strangers in the premises by removing articles and changing the fixture belonging to Party No. 1 and this was evidenced by the panchanama drawn-up by the police on August 21, 1981.

11. On these rival submissions, the principal question that falls for determination is whether the impugned order passed by the Additional Chief Metropolitan Magistrate, Kurla is justified or not. Now section 146(1) reads as follows :

"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 :"

The proviso to this section says that provided such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of peace with regard to the subject of dispute.

12. The jurisdiction conferred on the learned Magistrate under provisions of section 146(1) can be exercised : (a) at any time after making the preliminary order u/s 145(1) when the Magistrate considers the case to be one of emergency and in order to prevent the danger of breach of peace; (b) after enquiry u/s 145 when the Magistrate is unable to satisfy himself as to which of them was then in such possession of the disputed premises and (c) besides that none of the parties was in such actual possession. In this case, we are concerned only with the first provision of sealing and attachment in the case of emergency u/s 146(1). In this case, admittedly u/s 145(1) proceedings are still pending. Since the learned Additional Chief Metropolitan Magistrate has chosen to pass order on the ground that grave emergency exists, we must now examine whether on facts, such emergency existed during the period from passing of the preliminary order till the passing of the order u/s 146(1). The contention of Shri Gumaste has been that once the preliminary order was passed, and in this case when the notice was issued by the learned Additional Chief Metropolitan Magistrate to party No. 2 to file his say u/s 146(1) of the Criminal Procedure Code, there was no question of any emergency whatsoever. Nothing has happened nor any events had taken place which would change the situation. Having passed the preliminary order u/s 145(1), according to the learned Counsel, the likelihood of breach of peace has come to an end and no fresh events have taken place so as to pass an order u/s 146(1). In support of this contention, the learned Counsel relied on certain observations of Kotwal J., in Criminal Revision Application No. 667 of 1979. Before those observations are referred to the facts in that case must be noted very briefly because in my opinion, the decision of my learned brother Kotwal, J., is wholly distinguishable on facts of that case. The facts in that case were that one flat, being Flat No. 72 on the 7th Floor or "Paradise" Flat" at Napeansea Road was the flat in dispute which was originally owned by late Shri Lakhraj Dadlani who died abroad on July 9, 1978. The said flat was gifted by the said Dadlani to his daughter-in-law Mrs. Sheela Dadlani. These premises were let out by the executor of the will by one Haryana to M/s. Union Carbide India Limited under lease dated January 21, 1969 for a period of three years and it was renewed by an agreement dated December 19, 1973 upto January 31 1979 on the same terms and conditions. One of the officers of the company who was residing in the said flat vacated on May 12, 1979 and from that date till May 24, 1979, the said flat remained vacant though in possession of the company. Admittedly, nobody was occupying the premises physically. On May 24, 1979, it

was alleged that Mrs. Sheela with the help of her hirelings wrongfully dispossessed the company without due process of law and forcibly effected her entry inside and that is how she forcibly took possession of the flat in question. On those facts, a preliminary order u/s 145(1) came to be passed on May 13, 1979. The petitioner-company filed an application u/s 146(1) of the Criminal Procedure Code, contending that it was a case of emergency and emergency had continued on account of which breach of peace was imminent. Notice this application was given to the said Mrs. Sheela, the respondent in that case. Meanwhile one suit was filed in the Small Causes Court by the executor by the executor or the will restraining the company from inducting any third-party in the premises and Mrs. Sheela has also filed a suit in the City Civil Court after the order of attachment was passed and obtained ad-interim injunction restarting the company from possessing her. On these facts, my brother Kotwal, J., came to the conclusion that the ingredients of section 146 were not attracted at all and the order passed by the trial Magistrate directing the attachment of the premises was in complete disregard to the provisions contained in section 146 of the Criminal Procedure Code. According to Kotwal, J., the learned Sessions Judge had recorded a very reasoned order and ordered the correct view of the situation. In the course of discussion, in this judgment, Kotwal, J., came to the conclusion that in the facts of that case, the Magistrate could not have been satisfied with the necessity of passing such an order. That according to further requirement of law, existence of emergency and passing of an order of attachment and sealing were absolutely not borne-out in the circumstances in that case.

13. Mr. Gumaste has placed heavy reliance on some of the points of the above judgment. In paragraph 14 of the judgment, the learned Judge has held that no untoward incident is alleged to have occurred since the incident in question of Mrs. Sheela Dadlani taking possession of the flat. Her case in the Court was that the company had voluntarily given possession of the flat. According to the learned Judge, no dispute was raised and certainly not of an emergent nature. According to the learned Judge, the attitude of the company on their own showing, was not aggressive at all but they decided to resort to legal remedy. Even though the incident of forcible dispossession, according to the company, had taken place on May 24, 1979, an application u/s 145 of the Criminal Procedure Code was for the first time, made on May 30, 1979. The company took no steps and surrendered to the course of events which were time-consuming. According to the learned Judge, all these features in reality wiped-out the existence of any emergency and the situation would be taken out of the sweep of the provisions contained section 146 of the Criminal Procedure Code.

14. It is this context of the facts that the learned Judge came to the conclusion that event the date of the preliminary order, there was no likelihood of breach of peace.

15. It is well established that each judgment must be read in the facts of that case. As observed by the Lord has bury in Queen v. Letnam, 1901 A.C. 495.

"Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides"

The above observations of the Privy Council were approvingly quoted by the Supreme Court in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*,

16. Unfortunately, the judgment of Kotwal, J., does not assist the petitioner party No. 2 in support of its claim that no emergency has existed and, therefore, no order u/s 146 of attachment and sealing of the premises could have been passed by the learned Additional Chief Metropolitan Magistrate.

17. As I have indicated, the facts in this case have been self-eloquent. It is for the learned Additional Chief Metropolitan Magistrate to find out as to which of the two parties was in actual physical possession two months prior to the date of passing of the preliminary order. At that time, the learned Additional Chief Metropolitan Magistrate will record his reasons in support of his findings but the facts as brought on record of this case clearly show that on the day of the incident in question, Party No. 1 was in possession of the premises. There were number of documents in possession of Party No. 1 which indicated that Party No. 1 was in physical occupation. It is also clear from the facts which have come on record that as a result of the incident which took place on May 14, 1981, all the belongings of Party No. 1 were either removed and or thrown out and were lying on the ground floor and the passage when the panchanama came to be recorded by the police. The police had further registered a criminal case against Party No. 2 for trespass, wrongful confinement and causing hurt assisted by some hirelings. There is no doubt therefore, that the learned Additional Chief Metropolitan Magistrate was wholly justified in passing the preliminary order u/s 145(1) since there existed likelihood of breach of peace which alone gives the jurisdiction to the learned trial Magistrate. Therefore on the application made by Party No. 1 stating that Party No. 2 was trying to remove the articles of Party No. 1 lying in the corridor and was altering the fixtures, inside the premises and putting directed the Police Officer to draw up a panchanama and this panchanama proved the allegations made by party No. 1.

18. Now, the argument of Shri Gumaste that these facts are not sufficient to hold that grave emergency existed, in my view, is without any substance whatsoever. If a cumulative view is taken of the facts and occurrences of events on 2 or 3 days to the incident in question and thereafter, it would be clear that the intention of Party No. 2 was to take law into his hands in which firstly Party No. 2 there attend Party No. 1 and demanded vacant possession of the premises in question. Thereafter again Party No. 2 threatened Party No. 1 with dire consequences and actually took a forcible possession by throwing various articles outside the premises, wrongfully confining the wife of Party No. 1 in the kitchen. Party No. 2 according to the allegations of Party No. 1 broke the lock on the

premises, entered into the premises , inducted some strangers in the premises and tried to change the fixtures. These acts indicate that there was very much likelihood of breach of peace. Now, if these facts are considered and the space of time in which they occurred is considered, it is clear that from 4/5 days prior to the date of the incident till August 25, 1981, Party No. 2 has continue to do one or the other act which not only would create likelihood of breach of peace but would also provoke Party No. 1 to take law in his own hands. Whenever Party No. 2 indulged in these high-handed actions, it was a provocation to party No. 1 and the likelihood of beach of peace continued throughout this period until the order of attachment and sealing came to be passed. The arguments that nothing has happened after the passing of the preliminary order is factually incorrect. The application made by party No. 1 and the panchanama drawn-up by the police on August 25, 1981 as per the order of the learned Additional Chief Metropolitan Magistrate speaks for itself as to why Party No. 2 was bent upon doing. Just because the matter was pending in the Court, that is not sufficient to infer that no event had taken place which could amount to an emergency.

19. I had persistently asked Shri Gumaste, the learned Counsel for Party No. 2 to describe what kind of events must take place after passing the preliminary order to justify or warranting a situation of emergency and when jurisdiction u/s 146 should be assumed by the learned Magistrate. What is urgent or of emergent nature must depend on the context of facts and circumstances of each case. If the events are such that they may be constant as a result of which one of the parties are likely to retaliate the violent or the forcible act done by the other party, there can be no doubt that the state of emergency or breach of peace continue. The proviso of section 146 specifically states that such Magistrate who passes the order of attachment and sealing may withdraw the order of attachment if he is satisfied that there is no longer any likelihood of breach or peace with regard to the subject of dispute.

20. It is well known that proviso carves out an exception to section. The main section 146(1) confers power on the Magistrate to pass an order of attachment and sealing in one of the three circumstances contemplated in that section, one being that it is a case of emergency. Now, such order of attachment and sealing may be withdrawn by the learned Magistrate at any time if he is satisfied that there was no longer any likelihood of breach of peace with regard to the subject in dispute. In the facts and circumstances of this case, can it be said from the incident in question on May 14, 1981 till the order was passed i.e. on September 8, 1981 or atleast until August 25, 1981 when the Panchanama of the premises in question was drawn-up as per direction of the learned Magistrate no emergency existed. In my opinion, the first act on the part of the party No. 2 in throwing out and removing articles belonging to party No. 1 was of such a nature that it could have provoked breach of peace. Party No. 1 was alone with his wife in the premises whereas prima facie on the allegation of Party No. 1, Party No. 2 had come there with number of hirelings and after the arrival of the police constable, they seem to have run away. This uncalled for demonstration of

strength was sufficient to cause breach of peace, Police had registered the offence and, therefore, Party No. 1 was depending on the actions to be taken by the police as well as the learned Magistrate. Accordingly, the learned Magistrate issued orders u/s 145(1).

21. Now, because the proceedings in particular matter take a longer time than necessary, that does not warrant an inference that course of events did not justify the inference of emergency. If section 145 and section 146 are read together as part of single scheme, it is clear that first there should be likelihood of peace when the learned Magistrate assumes jurisdiction and pass an order u/s 145(1). In certain cases before he comes to the conclusion as to who was in possession, there may occur such events which would justify passing of the order section 146. More time gap will not wipeout the existence of emergency. In such case, mere length of time in passing the order u/s 146 is not indicative whether emergency existed or not. Such a determination would depend on the facts and circumstances of each case. In my opinion, the facts and circumstances of this case indicate atleast until August 25, 1981, Party No. 2 was indulging in certain activities such as breaking open the lock, changing the fixtures, removing the articles of arty No. 1, etc. These activities could easily provoke Party No. 1 to take law into its hands. In order to assume jurisdiction u/s 145 on the ground of existence of emergency, it is not necessary that actual physical violence should take place. It must be understood in the context of these provisions that state of emergency can continue if any party continues to resort to certain acts which would provoke breach of peace continually and also provoke the other side to indulge in such acts which would also result in violence but for the pending proceedings in the Court of law. A law abiding citizen even though provoked does not take law into his hands but does not mean that emergency did not exist. It is difficult to conceive emergency in the way in which the learned Counsel has argued. In this case, there has been explosive situation right from 3 or 4 days prior to the incident when party No. 2 threatened party No. 1 and it was continued atleast until August 25, 1981, and there is every possibility of further disruption of peace and violent action on the part of party No. 2. The existence of emergency, therefore, cannot be confined actual occurrence of violent events, if the acts of one party are such and continued to be such that it was likely to provoke the other party to take law into their hands and indulge into acts which might disrupt the peace, then it certainly can be said that emergency not only existed but contained to exist. The conduct of party No. 2 in this case, in my opinion was dangerous enough so as provoke party No. 1 into take back possession of the flat. That no untoward incident took place was only because the proceeding was pending before the learned Magistrate. As I observed earlier the delay in passing order u/s 145 cannot be attributed to Party No. 1 though it could have requested the learned Magistrate to pass orders as expeditiously as possible.

22. After taking into consideration the entire evidence on record I have no hesitation to come to the conclusion that Party No. 2 has acted very high

handedly and aggressively with complete disregard to law and has prima facie forcibly dispossessed Party No. 1. Party No. 2 continued to indulge in fact giving constant provocations to Party No. 1. There was, at one stage, even an attempt to outrage the modesty of the wife of Party No. 1 after confining her into the kitchen at the time of the incident. The emergency not only existed on the date of the preliminary order, but also continued at the time of the passing of the final order u/s 146 Criminal Procedure Code. The learned Magistrate has written a very well reasoned order and find no infirmity in the said order. The learned Additional Chief Metropolitan Magistrate has rightly come to the conclusion that this was proper and fit case to pass order of sealing of the premises. This criminal application is filed under provisions of section 482 of the Criminal Procedure Code. The principles on which such whole some powers are to be exercised are too well-known to be emphasised here and have been referred to in several judgments of the Supreme Court first being R.P. Kapoor's case, AIR 1960 S.C. and the last being State of Karnataka Vs. L. Muniswamy and Others, when the learned Chief Justice Y.V. Chandrachud had occasion to refer the circumstances in which the High Court can exercise its jurisdiction u/s 482. In this case, there is no material to come to the conclusion that this Court is required to exercise its extraordinary powers u/s 482 since there is no abuse of the process of law nor is there any occasion to interfere and set aside the order in the interest of justice.

23. The application therefore, is without any merits whatsoever and deserves to be dismissed. The order passed by the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla is hereby confirmed. The stay granted by this Court is vacated. The officer-in-charge of Kurla Police Station is direction to remove party No. 2 any other person found in the premises in question and attach and seal the premises until further orders are passed by the learned Additional Chief Metropolitan Magistrate, 11th Court Kurla or any other Court which would be seized of the matter. The Police Officer will attach and seal the premises on 19th December, 1981. The learned Magistrate is also to expedite the hearing of proceedings u/s 145(1) as expeditiously as possible and in any event pass the final order on or before 1st of March, 1982. It must be made clear that the observation in this judgment are confined to the events which took place 3 or 4 days in this the incident and continued till August 25, 1981 and whether day do or do not justify the state of emergency. The learned Magistrate will not be influenced by these observations in passing the final order u/s 145(1) of the Criminal Procedure Code.

24. Advocate Prem, who appears on behalf of Party No. 2 (and party No. II i.e. petitioner is present in this Court) prays that as the petitioner is getting alternative accommodation on 18th December he will vacate on 19th December, 1981. It is in this prayer that I am giving petitioner time upto 19th December to vacate the premises so as to enable to police to seal the promises and submit report to this Court.

25. The rule, therefore, stands discharged.