
(1994) 07 AHC CK 0016
In the Allahabad High Court
Case No : Criminal Revision No. 909 of 1994

Kunj Behari and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146, 146(1), 397

Citation : (1996) AWC 353 Supp

Hon'ble Judges : N.B. Asthana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.B. Asthana, J.—This revision u/s 397(2), Code of Criminal Procedure has been directed against the order dated 18.4.94 passed by Sub-Divisional Magistrate, Robertsganj district Sonbhadra under Sections 145(1) and 146(1), Code of Criminal Procedure directing them to put in written statement of their respective claims as regards the fact of actual possession of the subject matter of dispute and at the same time attaching the subject matter of dispute as an emergency measure to keep peace.

2. A preliminary point was raised as to whether the revision is maintainable. Learned Counsel for the revisionist argued that he had filed a petition u/s 482, Code of Criminal Procedure which was rejected on the ground that the revisionist can file a revision u/s 397, Code of Criminal Procedure and as such there was no Justification for invoking the extraordinary Jurisdiction of the Court u/s 462. Code of Criminal Procedure and the petition was rejected. The argument is that since in that petition it was held that the revision is maintainable he is filing this revision. The copy of that order has also been produced before me. It shows that relying upon *Barkoo v. State of U.P.* 1977 All Cr R 283. The Court came to the conclusion that revision lies against an order u/s 146, Code of Criminal Procedure.

3. In *Indra Deo Pandey v. Smt. Bhagwati Devi (IIXX)* 1981 ACC 316 it was held

by a Division Bench of this Court that order for attaching property u/s 146(1) during pendency of proceedings u/s 145, Code of Criminal Procedure is an interlocutory order. In *Jai Prakash v. Radhey Shyam Singh* (XXIV) 1987 ACC 464 it was held that a preliminary order u/s 145(1) of the Code or an order of attachment u/s 146(1) of the Code and directing the parties to appear on a particular day and lead evidence to prove their respective cases is an order made as a matter of procedure and allows the action to go on and nothing has been decided, hence it is certainly not a final order but only an interlocutory order and the revision would not be maintainable in view of Section 397. In *Shamsher Singh v. State of U.P.* 1985 CrL LJ 36 also it was held by this Court that no revision lies against an order of attachment passed u/s 145(1), Code of Criminal Procedure, because It does not touch or go to decide rights of any party to the proceedings, it is an interlocutory order against which revisions is barred by Section 397(2), Code of Criminal Procedure.

4. In view of the above rulings I am of the definite view that orders passed under Sections 145(1) and 146(1) Code of Criminal Procedure are purely Interlocutory order and no revision lies against them.

5. In the result the revision is dismissed summarily.