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**(1990) 11 AHC CK 0081**  
**In the Allahabad High Court**  
**Case No : Criminal Revision No. 600 of 1982**

Lal Bahadur Singh and Ors.

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

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**Date of Decision :** 22-11-1990

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146(2)

**Citation :** (1990) 11 AHC CK 0081

**Hon'ble Judges :** Srinath Sahay, J

**Final Decision :** Dismissed

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## Judgement

S. N. Sahay, J.—This is a revision against the order dated 2531982 passed by the learned IX Additional Sessions Judge, Azamgarh, setting aside an order passed by S. D. M. Sagari, dated 621982, directing release of the attached property in favour of the applicants in proceedings under Section 145, Cr. P.C.

2. The learned Magistrate felt satisfied on the basis of a police report that there was apprehension of breach of peace on account of the dispute between the parties regarding plot Nos. 281, 70 and 303. He therefore, passed preliminary order on 2581981 and directed that the property in dispute be attached under Section 146 (2), Cr. P.C. Later on the proceedings were dropped by the learned Magistrate and then a question arose as to in whose favour the attached property may be released. The learned Magistrate on the basis of a report of S. O. Raunapar, dated 2581981 that crops were grown on the disputed plots by the applicants at the time of attachment. Hence, he directed that the disputed plots and the crops standing thereon, may be released in favour of the applicants. Against this order Sarwati Singh, opposite party No. 2 filed a revision in the Court of Sessions. It was urged by him before the learned Sessions Judge, that after dropping the proceedings it was not open to the learned S. D. M. to determine the possession of the parties and hence, the order regarding release of property in favour of one of the parties passed by him was illegal. This contention was accepted by the learned Additional Sessions Judge. He referred to

the admission made by the applicants Lal Bahadur and others in their application dated 23101981 that the disputed plot is the joint property of the parties and is also in their joint possession. It was accordingly held on the basis of this admission that both parties are in possession of the land in dispute and it is not justified that possession should be given to any one of them. In this view of the matter the revision filed by opposite party No. 2 was allowed by the learned Additional Sessions Judge and the order of release passed by the learned S. D. M. was set aside and it was directed that the amount of crop in question shall be held in deposit until the parties get their rights established from a competent court.

3. I have heard the learned Counsel for the parties. The applicants have failed to show that there is any material on the record to suggest that the property in dispute was attached from the possession of any particular party. The learned Counsel for opposite party No. 2 has rightly submitted that after dropping the proceedings, the learned Magistrate became functus officio and he had no jurisdiction to determine possession and direct release of property in favour of one of the parties. He has relied on Gangadhar v. State, AIR 1952 All 550 and Dulla v. State, AIR 1953 All 341, in support of his contention. In view of the fact that the disputed property is admittedly the joint property of the parties, the order of the learned S. D. M. directing release of the property in favour of the applicants was clearly without jurisdiction. The order under revision is, therefore, perfectly justified and this revision has got no force.

4. The revision application is accordingly dismissed. Revision dismissed.