

(1967) 06 GUJ CK 0008
In the Gujarat High Court

Narandas Tolaram and Others

APPELLANT

Vs

Bhagsingh Kirpalsingh Khalsa and Another

RESPONDENT

Date of Decision : 07-06-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(4), 145(5), 151

Citation : (1968) CriLJ 1136

Hon'ble Judges : J.M. Sheth, J

Bench : Single Bench

Judgement

J.M. Sheth, J.—This is a revision petition filed by the original opponents Nos. 1 to 4 u/s 485 of the Criminal P.C. against the order passed by the learned Sub-Divisional Magistrate, Mehsana, in exercise of his powers u/s 145(4), Proviso 3, in a proceeding taken out by the present opponent No. 1 against the present petitioners, u/s 145 of the Criminal P.C.

2. The preliminary facts giving rise to this revision petition are briefly stated as under:

The opponent No. 1, Sardar Bhagsingh Kirpal singh Khalsa is a partner of M/s. Raj Construction Company, Ahmedabad. The present petitioners are the office-bearers and leading members of the Mehsana Sindhi Co-operative Housing Society, Mehsana. As stated at the Bar by the learned Advocate Shri Sheth, the petitioners Nos. 1 and 2 are the Chairman and Secretary of the said society respectively and the petitioners Nos. 3 and 4 are the members of the Managing Society of the said Society M/s. Raj Construction Co. are doing business of building contract. They had entered into a contract with the aforesaid Society in November 1964 through the Society a Architect. M/s. Asarpota and Asarpota for building bungalows on Society's plot, bearing Revenue Survey No. 37(P), situated near the Municipal Garden of Mehsana. The version of the Opponent No. 1 was that the dispute arose between them on account of Society's not making payment as per the agreement and as such the opponent No. 1 terminated the contract in May 1966. According to the opponent No. 1, as per the terms of the

said building contract, the opponent No. 1 was to be in possession of the property in question and was to remain in possession of it till the dues of the opponent No. 1, i.e. the aforesaid concern were paid by the said Society, It was the vision of the petitioners on behalf of the Society that the Society was the owner of the property in dispute and was in possession of it. The opponent No. 1 was not to be in possession of it and was never in possession of it. It was the say of the opponent No. 1 that the present petitioners tried to take possession of the site by force in August 1966 but since he was in rightful possession of the site by the order of the Architect and he had a right to retain possession of the site along with half finished bungalows till payment of his dues, amounting to more than a lac of rupees, he instituted two civil proceedings, one in the City Civil Court Ahmedabad in August, 1966 and the other in the Court of the District Registrar, Co-operative Societies, Mehsana in October, 1966 and obtained injunction orders from both the Courts or the authorities concerned, restraining the present petitioners from interfering with possession of his. The injunction order of the City Civil Court was obtained on 25.8.1966 and continued till 8.11.1966. Meanwhile, an injunction order was obtained from the Court of the Registrar's Nominee on 25.10.1966 and that injunction order was in force till the present proceedings but the petitioners in violation of the aforesaid injunction order, passed by the Registrar's Nominee, were entering into the site in question, daily from 17.11.1966 and were sending the labourers, masons and carpenters etc., for construction work. When they are checked or prevented by the watchmen of the opponent No. 1, they threatened and abused them and have tried to over them and in the situation as such, that it is likely to create a breach of peace. It is the petitioners, their employees and their labourers who have started construction of the bungalows and have caused considerable damage to the constructions, materials, etc. They are giving threats and asking the watchmen of the opponent No. 1 to leave the site. They are trying to dispossess him by use of violence. If effective opposition is made on his behalf, there will be a serious conflict which will result in a said to the property and life. However, applications have been made to the police in that regard. On these allegations and substantial allegations that it is very likely that breach of peace will be committed, he took the proceedings u/s 145. The learned Magistrate passed a preliminary order and contemplated u/s 145 of the Civil P.C.

3. The present petitioners filed their reply after notice was issued and they contended that there was no likelihood of a breach of peace. The dispute between the parties was of a civil nature. The Society was the owner of the property in question and was in its possession. The opponent No. 1 was not in possession of it. The opponent No. 1 had failed to carry out the construction work strictly as per specifications and when he was called upon to rectify the mistakes and errors, made by him, in execution of work, he abandoned the work under intimation, dated 26th March, 1966 and by a letter dated 27th May, 1966, terminated the contract. He was requested to resume that work and he declined it; only to harass the Society, he took false and frivolous proceedings by filing the

miscellaneous application in the City Civil Court, Ahmedabad and obtained an interim injunction, restraining the present petitioners from taking possession etc, and also got the Commissioner appointed by the Court to make inventory regarding the actual work done. He also filed a petition before the Registrar's Nominee for a claim of Rs. 1,04,873.57 nPs, against the Society and obtained ex parte injunction, restraining the Society from taking possession of the site land. There was no question of taking possession of the site land. The Society is in fact in its possession from the time the possession is handed over to it by the Government on 29.4.1960 vide Commissioner A.D.'s Order, dated 22nd January, 1960. The opponent No. 1 is harassing members of the Society and is taking proceedings one after the other. He has against the members of the Society, filed a Criminal complaint of trespass, before the Mehsana Taluka Police Sub-Inspector on 4.12.1966. The opponent No. 1 has no prima facie case to show that he was ever in exclusive possession of the land of the Society. The society has never parted with possession in favour of the Contractors. The opponent No. 1 intends to ruin the members of the Society by trying to prevent them from completing the remaining work of constructing the bungalows. The Society being the owner of the land and being in possession, is entitled as of right and legally to carry out the work without being obstructed by the opponent No. 1 or anyone.

4. The learned Sub-Divisional Magistrate, as stated earlier, had passed a preliminary order on 15.12.1966. The present petitioners were asked to appear before the Court on 28.12.1966 and they filed a reply and produced certain documents. The matter was adjourned to 3.1.1967. On 30.12.1966, people on behalf of both the sides had arrayed themselves on two sides and there was imminent danger of violence. The Police Sub-Inspector before whom the criminal proceedings were pending, reported to the Sub. Divisional Magistrate about what had happened on 30.12.1966. The Sub-Inspector had also, for preventing the apprehended serious violence, arrested persons arrayed on both sides, exercising his powers u/s 151 of the Criminal P.C. He reported to the Magistrate that there was imminent danger of a breach of peace and hence, necessary steps be taken. The learned Magistrate finding that there is an emergency, he made the impugned order on 7.1.1967. That order was implemented. It was executed by the P.S.I Concerned on 9.1.1967. Being dissatisfied with the aforesaid impugned order, the present petitioners filed a criminal revision application No. 11/67 before the District Magistrate, Mehsana and on 11.1.1967 obtained a stay order, staying, execution of the impugned order. That revision petition came to be rejected by the learned District Magistrate on 2.5.1967. The petitioner have therefore, come in revision against the impugned order to this Court, u/s 435 of the Criminal P.C.

5. The learned Advocate, Shri Sheth, appearing for the petitioners, firstly contended that the petitioners were not the only members of the said Society. There were thirty three members of the said Society. Other 29 members were not parties to the present proceedings. According to him, members have been allotted different bungalows, constructed on the site in question. According to his

contention, the present petitioners were the owners on only our bungalows constructed on the site. He therefore, contended that the subject or dispute could be only in relation to the bungalows owned by the present petitioners. The learned Magistrate was therefore, not justified in passing the impugned order in regard to the entire site on which the bungalows constructed by the Society stood. In short, his confection was that the subject of dispute would cover only a dispute in regard to the property owned by the parties who are before the Court in the proceedings. It may be at this stage said that before the Sub-Divisional Magistrate, no such argument was advanced and no plea was taken that an allotment has been made and the members had become the owners of the different bungalows, constructed on the site in question or each bungalow is in respective possession of its members. As stated earlier, in a reply given by the present petitioners, they have given reply on behalf of the Society, saying that the Society was the owner and in possession of the site of bungalows situated on the said land and opponent No. 1 was never in possession. The question regarding the possession of the entire property was in dispute. It was the say of the present opponent No. 1 in the application filed by him, for taking the proceedings u/s 145, that as per the terms of building contract, he was put in possession of this property, i.e. the site in question and he was to remain in possession of the site as well as the constructions made by him on it till his dues were paid is short, it was his contention that he was in possession of these properties, i.e. the sites in question along with the constructions thereon. The words used are "subject of dispute" and not "subject in dispute". In the instant case, it was apprehended that on account of a dispute regarding these properties, which were claimed by the rival parties to be in their possession there was likelihood of a breach of peace. Each party claimed to be in possession of it. The present petitioners, on behalf of the Society, canvassed an argument that the Society was in possession of it. They are the office-bearers of the Society. They challenged the fact alleged by the opponent No. 1 that opponent No 1 was to be and was in possession of it. It was the canvassed that the position of a contractor could be of an employee of the Society or at the most, an agent of the Society and the possession of an agent or a servant cannot be said to be possession of the opponent No. 1 in his right. In this revision petition, it is not necessary to go into a question regarding the legal relations that would obtain, between the building contractor and the Said Society. The important question for a decision in the proceedings u/s 145 of the Criminal Procedure Code is as to who is in actual and physical possession of the property in dispute. In this revision petition, moreover, we are concerned with regard to the legality or the correctness or the propriety of the order nested under proviso 8 to Sub-section (4) of Section 145 of the Criminal Procedure Code. The petitioners would be entitled to agitate the aforesaid question in the proceeding which is pending before the learned Magistrate for a final decision. He has not decided a question as to who was in possession of this property at the relevant date. That question is still to be decided. The learned Advocate, Shri Sheth for the petitioners, seriously contended that no question of making an order under this proviso could

arise, if these proceedings u/s 145 were not maintainable at all. He urged that they were not maintainable, as at the moat, it could be said that possession of the opponent No. 1, a building contractor was possession of an agent or an employee of the Society, It would, therefore, in law be deemed to be in possession of the Society and hence, no proceedings could be taken u/s 14 of the Criminal Procedure Code. In support of that argument of his, he invited my attention to *Nritta Gopal Singh v. Chandi Charan Singh* (1906) C W N 1088. The relevant observations made therein are as under:

The possession of one of several co-shebaits who for convenience has been entrusted with the sole management of the debutter estate is, as regards the shebaits right of his co-shebaits, that of an agent. The agency can be withdrawn.

A dispute between such a person claiming sole management and his co-shebaits who have withdrawn the agency and claim Co have joint management with him is not a fit subject for a proceeding u/s 145 of the Criminal Procedure Code

Another decision relied upon by him was a decision of the Nagpur Judicial Commissioner's Court, *Bajirao v. Dadibai* 27 Cri LJ 212 : A.I.R 1926 Nag 286. The observations made therein also act as under:

The possession of agent or a servant which is permissive cannot give a party to a proceeding u/s 145 ft locus standi against his principal or master. The possession that can be pleaded in such a proceeding must be possession based on a claim of right to possession

It will be significant to note that the present opponent No. 1 claimed that as per the terms of a building contract, he was to be in possession of the property till his dues were paid up by the said Society and as per the terms, he got possession of this property, through the architect of that Society. Prima facie, therefore, it cannot be said that this proceeding was not maintainable. As this question may have to be decided by the learned Sub-Divisional Magistrate, before whom this proceeding is pending, I would not be justified to definitely record a finding on that question. At this stage, suffice it to say that it "cannot be said prima facie, that such a proceeding was not maintainable and eventually, interim order passed by the learned Magistrate is without jurisdiction.

6. As stated earlier, the dispute between the parties to this proceeding related to this property. namely, the site bearing Revenue Survey No. 37(P). given by the Government to the said Society along with the bungalows that were constructed on it. It is the say of the opponent No. 1 that he is in possession of that property on the basis of the terms of a building contract, entered into between him, i.e. his concern and the said Society. It is the say of the petitioners that the opponent No. 1 was never in possession of it and is not in possession of it and was never to be in possession of it and the Society is in possession of it from the time, the land was given by the Government to the Society and it continues to be in possession of it. The dispute is in relation to that property. It is apprehended by the opponent No. 1 that in relation to that property, on account of the dispute

regarding possession, between the parties, there is likelihood of a breach of peace. In my opinion, therefore, that would be the subject of dispute. The learned Magistrate was therefore, empowered in law to pass the impugned order in regard to that property, though it may be that persons other than the present petitioners may be interested in that property. The impugned order, therefore, cannot be assailed on that ground. That contention of the learned Advocate Shri Sheth is, in my opinion, not well founded.

7. It has been next contended by the learned Advocate Shri Sheth that the other members of the said Society, being not parties to this proceeding, though interested in the property in dispute, this order regarding attachment of that entire property cannot be passed by the learned Magistrate.

8. Sub-section (4) of Section 145 of the Criminal Procedure Code runs as under:

The Magistrate shall then, without reference to the merits or the claim of any of such parties to a right to possess the subject of dispute, per use the statements, documents and affidavits, if any, so put in, hear the parties and conclude the inquiry, as far as may be practicable within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject?.

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

A perusal of this material part of Sub-section (4) of Section 145 of the Criminal Procedure Code and the third proviso, clearly indicates that the Magistrate has to decide a question as regards to the actual and physical possession of the subject of dispute. The question regarding a right to possession would be immaterial in this proceeding. The proviso in question empowers the Magistrate to pass an order which is of an emergent nature, even before concluding his inquiry, contemplated in that sub-section. As found by me earlier, the subject of dispute is the property in question. If the Magistrate consider the case to be one of emergency, he has been empowered under this proviso to attach the subject of dispute at any time, pending his decision under this Section. The present proceeding has been taken by the opponent No. 1 against the petitioners, the office-bearers of the Society, saying that they are trying to take possession by force and on account of it, if there is effective opposition made by him, there is likelihood of a breach of peace. In short, it is his say that it is these petitioners who are likely to take possession by force and accordingly, there is likelihood of a breach of peace, if he makes an effective opposition. He, therefore, has taken the proceeding against them only. It will be proper at this stage to refer to Sub-section (5) of Section 145 of the Criminal Procedure Code. The material part of it runs as under:

Nothing in this section shall preclude any party so required to attend, or any

other person 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.

It is, therefore, evident that a person interested in the subject of dispute, though not made a party, can appear before the Magistrate and show that no such dispute as aforesaid exists or has existed. Upto this stage, other members of the slid Society have not come and put forward any such plea which requires investigation in the matter. In my opinion, even though other persons may be interested in the dispute such an order can be legally passed. The order is to be passed in regard to the property which is the subject of dispute. The object is to prevent breach of peace which is likely to arise on account of the dispute between the parties. It is the say of the opponent No. 1 that the petitioners are the persons who, actually on behalf of the Society, are likely to commit a breach of peace. The learned Advocate, Shri Bhatt, appearing on behalf of the opponent No. 1, invited my attention to AIR 1943 246 (Nagpur) , in support of his observations that the order passed could even bind the third party. The relevant observations made therein are as under:

When a criminal Court makes an order of attachment u/s 146, that order binds all third parties.

An attachment u/s 146 is authorised by law, and if third parties are injured when the Court takes possession they have only two remedies : they can apply to the criminal Court to withdraw the attachment on the ground that no fear of breach of the peace exists any longer, or else they can file a suit to establish that they are the persons entitled to possession.

The wordings of Section 146 and the circumstances in which action u/s 146 of the Criminal Procedure Code can be taken, are quite different. That decision, in my opinion, will not be of much use in deciding the question that is passed before in a proceeding u/s 145 of the Criminal Procedure Code. But as stated earlier, a person interested in the dispute, though he is not made a party in the proceeding, is entitled to come and show that no such dispute exists or has existed.

9. Another decision, relied upon by the learned Advocate Shri Bhatt was in Krishna Kamini v. Abdul Jabbar ILR (1903) Cal 155 (PB). The Full Bench of Calcutta High Court has made the following observations:

Proceedings u/s 145 of the Criminal Procedure Code are not without jurisdiction because the Magistrate on information before him has made parties thereto only those actually in dispute and likely to cause a breach of peace, although is brought to his notice that another party is interested in the subject, matter of the dispute, not is the Magistrate bound to stay such proceedings?.

The words parties concerned in such dispute are intended to indicate all persons

claiming to be in possession at the time of the initial orders under Clause (1), Section 145 of the Code?.

A claim merely to a right to possession, as distinguished from a claim to be in possession would be outside the scope of the inquiry.

It is true that the decision related to a question regarding an order, i.e., a final order that can be passed in a proceeding u/s 145 of the Criminal Procedure Code. In the present case, we are concerned with the interim order that is passed by the learned Magistrate u/s 145(4) of the Criminal Procedure Code. If the principles governing the present case would be the same, it cannot be said that as there are other persons interested in the dispute, this order is passed without jurisdiction as they are not parties to this proceeding. As stated earlier other persons interested have been given a right to come to the Court and show that no dispute exists or has existed. In my opinion, the impugned order cannot be availed also on the ground that other members of the Society are not parties to this proceeding.

10. In my opinion, the most important question arising in this revision petition is whether the order passed by the learned Sub-Divisional Magistrate in the manner in which it has been passed, can be passed in law. It was strenuously contended by the learned Advocate Shri Sheth for the petitioners that the proviso in question contemplates attachment of the subject of dispute, meaning thereby, attachment of the property in dispute. It did not contemplate passing of an order, authorising somebody to take possession of it and restraining the disputing parties from entering into it or from going upon that property. In short, his contention was that what was contemplated to be done was restrain the parties from alienating the property in any manner or from creating any encumbrance over it. In short, his argument was that the meaning of the word "attachment" should be as understood by the word "attachment" referred to in the Civil Procedure Code, If we examine this question only from the point of view of the object underlying, this argument cannot stand to reason. The object of this section is to prevent the parties amongst whom there is a dispute regarding its possession, from committing a breach of peace. It is on account of dispute regarding the possession of the property, that there is likelihood of a breach of peace that is to be prevented. That cannot be prevented by merely attaching the property in the sense one understands in a civil matter by restraining alienation of the property or restraining the creation of any encumbrance. By the said mode, that purpose cannot be served. It is only if both the parties are prevented from going upon that property and from taking possession of it, by taking that property in custodia legis, that purpose or the object could be well served. Taking into consideration the object only, in my opinion, this argument canvassed by the learned Advocate Shri Sheth cannot be accepted as a well founded argument.

(11) In *Nandkishore Prasad Singh Vs. Radhakishun*, , at p. 125, the following pertinent observations have been made by Chatterji J. after referring to the proviso in question:

It is not disputed that the effect of an attachment under this proviso is to bring the property under the control of the Magistrate, According to Stroud's Judicial Dictionary "Attach," is a taking or apprehending by Command or Writ." By attachment the land comes into the custody or control of the Magistrate. The parties have no longer any control or possession over the land. Otherwise the above quoted proviso to Section 145(4) would be meaningless. That proviso authorises an attachment only in case of emergency, that is to say, in case where the apprehension of breach of the peace is so imminent that without an immediate attachment breach of the peace cannot be averted. Such object can only be gained by preventing both the parties from going upon the land, and this is the effect of the attachment. If after attachment the parties are still left free to go upon the land, the very object of the attachment will be defeated. If by the attachment this land comes under this control or custody of the Magistrate, he may take such steps as he thinks fit for its proper custody and management. Obviously he cannot be expected himself to manage the property. He must therefore, put somebody in charge of the management.

At p. 126, after referring to the observations made by Mewa Lal and Others Vs. Emperor, in Mewa Lal v. Emperor which were as under:

The order of attachment which the law empowers him to make has no greater force than any civil Court attachment, the effect of which is generally to restrain alienations.

and referring to the observations made by another Judge Jwala Prasad J., in that very case, which were as under:

As said by my learned brother, an attachment u/s 145 may have the same effect as an attachment under the Civil Procedure Code. It may possibly amount to something more than that that is to say, after attachment the Magistrate may take step for the proper care and custody of the property and prevent the removal of the property by any of the rival claimants or strangers.

The following pertinent observations have been made. They could be referred to with advantage at this stage:

With all respect I must say that the observation of Mullick J., which was a mere obiter does not seem to be correct. The purpose of a civil Court attachment is quite different from that of an attachment u/s 145(4), Criminal Procedure Code. Attachment of immovable property under the CPC is a preliminary step to be taken to make the property available for sale for satisfaction of the decree. The purpose of the attachment is to prohibit the judgment debtor from transferring or charging the property in any way. Such purpose is wholly foreign to the scope of a proceeding u/s 145, Criminal Procedure Code, The Magistrate acting u/s 145 has nothing to do with the title to the property and as concerned with maintaining actual possession with a view to prevent breach of peace. The observation of Jwala Prasad J., rather seems to be correct.

In the body of the judgment, observations made by Mackney J., in AIR 1938 Rang 88 has been approved. They are as under:

The word "attach" merely means to bring under the control of the Court, and the Magistrate is entitled to effect that object in any way which is within his power. Certainly the appointment of a receiver with the powers of a receiver under the Code of Civil of Procedure is now one of those ways, because unless that power is expressly given, a Magistrate cannot exercise it.

He further said:

Whilst I think it advisable not to employ the term "receiver" owing to the possibilities of misunderstanding that may arise, yet I think that it is clear that if the Magistrate's attachment is to be effected he must put some person into possession of the property, who will have authority to maintain his possession.

After reviewing several authorities, at p. 127, the following observations have been made:

These decisions clearly establish that a Magistrate, attaching the subject of dispute u/s 145(4), Criminal Procedure Code, is competent to make suitable arrangements for the custody of the attached property.

I am in respectful agreement with these observations made by the Patna High Court. The learned Advocate Mr. Bhatt invited my attention also to a decision in State of Vindhya Pradesh v. Ram Lakhan AIR 1953 V p 25. In para. 8 of the Judgment, at p. 27 the following observations have been made:

Under Section 145, Criminal Procedure Code, the Magistrate is not competent to call upon the party to abstain from any act if he wants that "all" claimants (he cannot act against only some of the claimants u/s 145, Criminal Procedure Code) should be stopped from exercising possession, he cannot order it directly. But he can secure indirectly same results pending proceedings by an attachment under the second proviso to Sub-clause (4). Having made the preliminary order under Sub-section (1), the Magistrate should decide if there is any emergency at all if there is and only if there is he may attach the subject matter of the dispute pending his decision. Then he should order the attachment by the officer of the thana, or the collector in case the properties are extensive and lie in more than one thana. The Officer directed can attach either by himself taking possession on behalf of the Courts or by appointing a receiver; either way he should apprise the parties concerned and the public in general, by individual and general notices that the attachment has been effected in the one way or the other.

It is not necessary to enter into a question whether a receiver can be appointed or not, in such a proceeding u/s 145 of the Criminal Procedure Code at the stage in question. Suffice it to say that in this decision also it has been stated that this attachment can be effected by ordering that the Officer to take possession on behalf of the Court. In the aforesaid Patna decision relied upon by the learned Government Pleader, Shri Sompura on behalf of Opponent No. 2, Patna High

Court has discussed this question at length, as referred to earlier. I am in respectful agreement with that decision. The real object of this proviso can be served or enforced only by adopting a mode which has been referred to, in this Patna decision. What has been done by the learned Magistrate in the instant case is that he has ordered to take possession of this property, pending decision as to who was in actual possession of this property at the relevant date and to maintain the status quo. The possession was to be taken by the Government. The parties who have got the dispute in relation to this property, have been restrained from interfering with that possession of the Government and the Police Sub-Inspector, Mahsana has been directed to enforce this order and to keep proper Bandobast. In short, the substance of the order is that this property is to be in custodia legis and the parties are restrained from disturbing that possession. The real object of this proviso can only be served by such an order. It is the meaning that could be reasonably given to the word "attachment" used in the third proviso to Section 145(4) of the Criminal Procedure Code. The order of "attachment" passed, therefore by the learned Sub-Divisional Magistrate, cannot be assailed on that ground.

12. The contention next urged by the learned Advocate Shri Sheth was that a perusal of this proviso clearly indicates that a question whether there was an emergency or not, was a condition precedent. If it was found that there was an emergency, i.e. it was a case of emergency, then and then, the Magistrate has jurisdiction to order attachment of the subject of dispute. The argument is a well founded argument. It is only if the Magistrate finds and considers that it is a case of emergency, then only he could order such an attachment. There is no doubt regarding it is the instant case the Magistrate has found that it is a case of emergency and he has concluded the case to be one of emergency and that is why he has ordered attachment. It will be significant to note that even after preliminary order was passed and the matter was pending for the inquiry contemplated in Section 145 on 30th August 1963 the persons on both the sides had arrayed themselves on two sides and they were likely to resort to violence. Police Sub-Inspector reported that they were armed with weapons and he felt that there was likelihood of serious violence and if preventive steps are not taken, serious mishap would take place. On consideration of that report. after referring to the materials found therein, the Magistrate has found that it was case of emergency and to prevent imminent breach of peace, it was necessary to pass an order of attachment. The learned Magistrate in his order, has referred to the events that had happened and also referred to the event that happened on 30.12.1966 and has considered the report made by the Police Sub, Inspector on 5.1.67 and has found that if any of these parties in dispute is kept in possession of the property, there is likelihood of a very serious consequence and there is likelihood of serious assault and likelihood of a breach of peace. He, therefore finds that it being a case of emergency, order of attachment is required to be passed and he passes that order. It is, therefore, evident that there were materials before the learned Magistrate, on the strength of which he found or

considered that it was a case of emergency and the order in question was required to be passed for preventing imminent breach of peace. It cannot, therefore, be said in the circumstances of the case that this order was illegal, improper or incorrect. In the circumstances of the case, it can be said that it was a legal order, it was a correct order and it was a proper order and it cannot be challenged on a ground of propriety. The learned Advocate Shri Sheth contended that the present petitioners had filed a revision petition against the impugned order in the Court of the District Magistrate, Mehsana. Section 145 of the Criminal Procedure Code indicates that such a proceeding can also be taken up before a District Magistrate. It was not only that Sub-Divisional Magistrate was entitled to entertain it, District Magistrate was also one of the authorities, competent to entertain such a proceeding. He, therefore, contended that as the petitioners had approached the District Magistrate to exercise his revisional jurisdiction, it was incumbent upon him to call for a fresh report and find whether there was such an emergency. This argument of his is not well founded. The District Magistrate was not approached by the opponent No. 1, to start a proceeding. He had approached the Sub-Divisional Magistrate and the Sub-Divisional Magistrate was entitled to take such a proceeding in view of the provisions of Section 145(1) of the Criminal Procedure Code. The District Magistrate has been empowered u/s 485 of the Criminal Procedure Code to revise the order passed by the Sub-Divisional Magistrate. His powers are defined in Section 438A of the Criminal Procedure Code. If he finds that order, passed u/s 145 should be altered, he has to refer the matter to the High Court. He has, therefore, to say whether in his opinion, this order passed by the Sub-Divisional Magistrate is illegal, incorrect and improper, which would require altering or reversing of that order. If he so finds, he has to refer the matter to the High Court. No question of his calling for a fresh report, therefore, arises.

13. It was next contended by the learned Advocate Shri Sheth that the District Magistrate in the aforesaid revision application should have recorded his own finding, whether there was an emergency or not. He has not clearly recorded such a finding. I have not to revise the order passed by the District Magistrate. The District Magistrate was the Revising Authority. He thought that it was not a fit case for reporting it to the High Court for altering or reversing the impugned order. This Court has also got revisional jurisdiction, and this Court can revise the order passed by the learned Sub-Divisional Magistrate. That position is made quite clear by Sub-section (4) of Section 485 which runs as under:

The High Court may call for and examine the record of any proceeding in respect of an order made under Sections 118, 122, 148, 144, or 145, notwithstanding the fact that such proceeding was before an Executive Magistrate or the Commissioner of Police as the case may be.

It is, therefore, evident that this Court also can exercise its revisional powers. The exercise of that power does not depend upon the making of a report by the District Magistrate. The District Magistrate makes such reports in exercise of his

powers u/s 488A. But apart from that, the High Court can pass proper orders in exercise of its powers u/s 435 read with Section 489 of the Criminal Procedure Code. The only question, therefore, that survives for determination is whether the impugned order passed by the Sub-Divisional Magistrate can be assailed on any of the grounds urged by the learned Advocate, Shri Sheth.

14. As found by me, the impugned order is quite legal, correct and proper. It was also contended by the learned Advocate Shri Sheth that such an order of attachment could only be coterminous with emergency. If emergency ceases to exist, the order of attachment cannot stand. The learned Magistrate can be approached if really the emergency has ceased to exist. It was not canvassed before the learned Magistrate that the emergency has ceased to exist. On the contrary, on 30.12.1986, it was found that there was imminent danger of breach of peace and that is why the Magistrate had to pass their order on 7.1.1987 on considering of the report of the Police Sub-Inspector. The order passed, therefore, cannot be assailed on that ground also.

15. As all the contentions raised on behalf of the petitioners fail, the petition fails.

16. Rule is discharged and the petition is dismissed. The Sub-Divisional Magistrate is directed to conclude the inquiry in this proceeding, pending before him as expeditiously as possible.