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**(2019) 08 UK CK 0225**

**In the Uttarakhand High Court**

**Case No :** Criminal Miscellaneous Application No. 1587 Of 2014

Roshani Devi

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

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**Date of Decision :** 30-08-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 145, 145(1), 147, 147(1), 147(3), 482

**Citation :** (2019) 08 UK CK 0225

**Hon'ble Judges :** Manoj K. Tiwari, J

**Bench :** Single Bench

**Advocate :** Sagar Kothari, Ramji Srivastava, Saurabh Kumar Pandey, Bhuwan Bhatt

**Final Decision :** Dismissed

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## Judgement

Manoj K. Tiwari, J

1. This Criminal Miscellaneous Application under Section 482 Cr.P.C. has been filed for quashing the order dated 30.05.2014 passed by City Magistrate, Dehradun in proceedings under Section 147 (1) Cr.P.C. Applicant has also challenged the order dated 18.11.2014 passed by District & Sessions Judge, Dehradun in Criminal Revision No. 188 of 2014, whereby order of learned City Magistrate was affirmed.

2. Respondent no. 2 is a society, which runs a Gurudwara known as Sri Satguru Baba Darvesh Hari Ji, Sant Mandal, Kehri Gaon, District Dehradun. Respondent no. 2 owns agricultural land abutting the said Gurudwara. Respondent no. 2 made a complaint to the City Magistrate under Section 147 Cr.P.C. stating that the public path leading to Gurudwara and adjoining agricultural land, has been blocked by Smt. Roshni Devi (applicant herein) and her three sisters. It was further stated in the complaint that the said path was about 15 feet wide and was used for more than 50 years for taking tractor and other agricultural implements to the agricultural field.

3. City Magistrate, Dehradun issued notice on 15.07.2006 to the applicant and her three sisters requiring them to file their objection on or before 01.08.2006. Applicant filed her objection disputing the averments made in the complaint.

4. City Magistrate called a report from the Revenue Officials including Survey Naib Tehsildar, who was also cross-examined by the applicant. City Magistrate personally inspected the disputed site on 29.05.2014 in the presence of both the parties.

5. After considering the entire material on record, City Magistrate came to the conclusion that applicant and her sisters have encroached upon public path, which exists in khasra no. 58 and have also erected a mobile tower over the public path, which is likely to cause breach of peace. Therefore, applicant was directed to remove encroachment from khasra no. 58 and also to remove the tower erected over the public path and to restore the public path.

6. Feeling aggrieved by said order, applicant filed Criminal Revision No. 188 of 2014, which has been dismissed by learned District & Sessions Judge, Dehradun vide judgment dated 18.11.2014. Thus, feeling aggrieved, petitioner has approached this Court.

7. Heard learned counsel for the parties and perused the record.

8. Section 147 Cr.P.C., which has been invoked by City Magistrate, is extracted below:-

"147. Dispute concerning right of use of land or water.-(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such, evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next

before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such a seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1); and when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub- section (1) of section 145."

9. A perusal of Section 147 (3) reveals that it enables an Executive Magistrate to pass an order prohibiting any interference with the exercise of alleged right of user of land or water within his local jurisdiction with a view to maintain law and order and to prevent breach of peace.

10. It has come on record that applicant has filed a suit for permanent injunction against respondent no. 2 and four others in respect of khasra nos. 85, 92, 93, 97 & 104.

11. Learned counsel for the applicant submits that the allegations made in the complaint by respondent no. 2 are incorrect and there was no passage existing in khasra no. 58. He further submits that the mobile tower is standing over khasra no. 58, which belongs to the applicant.

12. The question regarding title and possession in respect of land comprised in khasra number 58 can be decided by the Civil Court, which is seised of the matter and the provision of Section 147 Cr.P.C. cannot be invoked for deciding such disputes regarding civil rights between the parties.

13. From the complaint made by respondent no. 2, it is apparent that respondent no. 2 and persons belonging to Sikh community, who visit Gurudwara and the agricultural farm adjacent to the Gurudwara have been using the public path for last several years. The said public path connects the property belonging to the respondent no. 2 with the main road. Thus, any interference with the right of user of the said public path is likely to cause breach of peace.

14. Therefore, learned City Magistrate was justified in invoking Section 147 (3) Cr.P.C. for passing an appropriate order to prevent breach of peace. Moreover, learned City Magistrate has passed the order after giving reasonable opportunity of hearing to the applicant and also after holding proper inquiry including spot inspection.

15. Learned revisional Court has also considered all relevant aspects of the matter while dismissing the criminal revision filed by the applicant.

16. This Court finds no reason to interfere with the orders passed by learned Courts below.

17. Accordingly, this criminal miscellaneous application filed under Section 482 Cr.P.C. fails and is dismissed.

18. However, applicant shall be at liberty to get his rights in respect of the land in question adjudicated by a competent Court of law and the proceedings instituted by the applicant shall be decided on merits untrammelled by the orders impugned in this application.