

**(1978) 08 GAU CK 0003**  
**In the Gauhati High Court**

S. Kamayao

APPELLANT

Vs

A.C. Mamatuithei

RESPONDENT

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**Date of Decision :** 01-08-1978

**Acts Referred:**

Constitution of India, 1950 — Article 227

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

**Citation :** (1979) CriLJ 118

**Hon'ble Judges :** C.M. Lodha, C.J

**Bench :** Single Bench

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## Judgement

C.M. Lodha, C.J.—By this application under Article 227 of the Constitution of India, the petitioner has prayed that the order dated 29th Oct. 1976 (Annexure-A/3) passed by the Executive Magistrate, Ukhrul, Mani-pur East District, in proceedings u/s 145, Cr. P.C. be quashed.

2. The case has a chequered history, though Its facts relevant for decision of this application lie within a narrow compass. In proceedings u/s 145, Cr.P.C. the learned Magistrate attached the property in question and directed both the parties to appear before him and adduce evidence in respect of possession of the land. After recording the evidence adduced by the parties, the learned Magistrate by his order dated 31st Jan., 1975 came to the following conclusion:

Hence, I am convinced that the seven pheidoms on the lower side of the disputed land along with the land unreclaimed was in the physical possession of the 2nd party (i. e. the respondent before me) and the nine pheidoms on the upper side was physically in possession of the 1st party (i. e. the petitioner before me) prior to the dispute arisen on the facts given to above.

3. Aggrieved by the aforesaid order, the petitioner filed a Criminal Revision before this Court, which was registered as Criminal Revision No. 2 of 1975 and this Court by its order dated 30th August, 1976 : reported in 1977 GLR 58 quashed the Magistrate's order dated 31-1-1975 holding that after an order of attachment is made u/s 146(1), Criminal P. C. the Magistrate is not empowered

to do anything whatsoever except to withdraw the order of attachment or to make necessary arrangements for looking after the property. The matter was, thereafter, put up before the learned Magistrate on 23-10-1976 and the learned Magistrate ordered that in view of the judgment of the Gauhati High Court in Criminal Revision No. 2/75 the respondent be restrained from entering into the wet field known as Khongkhai Khongei and further directed that the possession of the disputed land Khong-khai Khongei be declared in favour of the petitioner Shri Kamoyao of Khang-khui Khunou. However, by a later order dated 29th October, 1976, the Magistrate found that he had not correctly appreciated the High Court's order dated 30th August, 1976 and, therefore, he withdrew the order dated 23rd October, 1976 passed by him and directed that the Officer-in-charge Shangshak be appointed receiver u/s 146(2), Cr.P.C. and directed him to make necessary arrangement for the harvest of crops in the disputed land. He further directed that the produce harvested shall be in the custody of the Receiver until the title or possession over the disputed land is decided by a competent Civil Court. Dissatisfied with this order (which will be hereinafter referred to as the "impugned order"), the petitioner has filed this application under Article 227 of the Constitution of India. The petition is being opposed on behalf of the second party.

4. The contention of the petitioner is that the single Judge's judgment of this Court dated 30th August, 1976 : reported in 1977 GLR 58 , on the basis of which the impugned order has been passed, is no more a good law in view of the later Division Bench decision of this Court in Criminal Revn. No. 3 of 1976 (Thokchom Khoyon Singh alias Khuyon Singh v. Moirangmayum Singh) and Cri. Revn. No. 9 of 1976 (Konjengbam Lam-phel Singh v. Thangjam Gourahari Singh) decided on 12th April, 1978 : reported in Thokchom Khoyon Singh Vs. Moirangmoyun Bira Singh and Another, and, therefore, the impugned order must be set aside and the learned Magistrate be directed to proceed on the lines indicated in the Division Bench decision.

5. It is not necessary for me to decide, to what extent, the view taken by the Single Bench, referred to above, has been overruled by the Division Bench. It is sufficient for disposal of this case to observe that the learned Magistrate did not commit any error in exercise of his jurisdiction in complying with the directions given by the learned Single Judge and the mere fact that subsequently a Division Bench of this Court took a different view in another case, is no ground for setting aside the impugned order by the Executive Magistrate. It is not the petitioner's case that the impugned order is not in consonance with the directions contained in the Single Bench judgment arising out of this very case. Apart from that, the petitioner is not without a remedy. Assuming for argument's sake, that the Magistrate was competent to decide the matter finally u/s 145, Cr.P.C. the fact remains that the aggrieved party can move a competent Court for determination of the rights of the parties with regard to the person entitled to possession of the disputed land. No doubt, Section 146(1), Cr.P.C. contemplates that if the Magistrate decides that none of the parties was in possession on the date of

making the order under Sub-section (1) of 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. In view of this provision, the Magistrate, it does appear to me, could have decided that none of the parties was then in possession, as is referred to in Section 145 and pass suitable order regarding continuing the attachment or withdrawal of the same. But in the facts and circumstances of the present case, the learned Magistrate was bound by the order of the learned Single Judge and could not have made any departure from it. I have, therefore, come to the conclusion that there is no manifest error in exercise of jurisdiction by the learned Magistrate and, therefore, the order cannot be interfered with. As already observed above, the petitioner has adequate alternative remedy of getting the rights of the parties, in regard to the disputed land, determined by a competent Court.

6. In the result, I do not see any sufficient ground for allowing this revision petition and hereby dismiss it. But in the circumstances of the case. I leave the parties to bear their own costs.