

**(1971) 06 GAU CK 0003**  
**In the Gauhati High Court**

Samauddi Sekh and Another

APPELLANT

Vs

Abinas Chandra Sharma

RESPONDENT

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**Date of Decision :** 23-06-1971

**Acts Referred:**

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

**Citation :** (1972) CriLJ 172

**Hon'ble Judges :** P.K. Goswami, C.J

**Bench :** Single Bench

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**Judgement**

P.K. Goswami, C.J.—This Revision is directed against an order Passed by the Magistrate First Class, in a proceeding u/s 145 Criminal Procedure Code declaring possession of the disputed land in favour of the first party.

2. The first party submitted written statement and affidavits. The second party submitted their written statement and their sole affidavit. The learned Magistrate after perusal of the documentary evidence produced before him declared possession of the disputed land in favour of the first party.

3. The learned Counsel for the petitioners submits that the affidavits should not have been treated as evidence in the case as these were not sworn before the Magistrate who passed the final orders. In support of his contention he relies upon two decisions of the High Courts of Allahabad and Rajasthan, respectively ( Wahid and Another Vs. State, and Hemdan Vs. State of Rajasthan and Others, . He also very fairly draws my attention to a decision of the Puniab High Court in the case Ahmad Din Vs. Abdul Salem, , where a contrary view was taken.

4. Section 145 of the Code of Criminal Procedure after the amendment in 1955. has introduced reception of evidence by affidavits u/s 145 (4). The law itself has made provision for considering the affidavits that have got to be filed by the parties. There is no provision under this sub-section that the affidavits would have to be sworn before the Magistrate who is enquiring into the matter. The matter may be different if the affidavits are sworn before persons who are not

competent to administer oath. That is, however, not the case here. Any affidavit that is sworn before a competent person can be filed as evidence in the case while a Magistrate makes an enquiry u/s 145 (4) of the Code of Criminal Procedure. With respect I agree with the reasonings given in the Punjab case and with equal respect I disagree with those given in the two decisions of the Allahabad and Rajasthan High Courts. A new procedure has been laid down and there is no bar in law debarring the parties from submitting affidavits which may be very conveniently sworn before any other competent Magistrate.

5. There is, therefore, no substance in this application which is accordingly dismissed.