

(1994) 09 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 192 of 1984

Yaqub Ali

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 145(1), 145(6), 146
Judicial Officers Protection Act, 1850 — Section 3

Citation : (1995) CriLJ 1376 : (1994) 2 RLW 555 : (1995) 2 WLC 730

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : N.P. Gupta, for the Appellant; V.R. Mehta, Public Prosecutor and S.K. Goyal, (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

R.R. Yadav, J.—Challenge in the present revision petition is to the order passed by the learned City Magistrate, Udaipur under Sub-section (1) of Section 145, Cr. P.C. and order passed by him attaching the Moiyatpura Mosque under Sub-section (1) of Section 146, Cr. P.C. Learned City Magistrate passed the impugned preliminary order under Sub-section (1) of Section 145, Cr. PC on 29-5-84 and subsequent thereafter he passed another order of attachment under Sub-section (1) of Section 146, Cr. PC on the ground of Emergency attaching Moiyatpura Mosque on 30-5-84. Both the orders mentioned-above passed by the learned City Magistrate, Udaipur are under challenge before me.

2. Before entering into the merit of the present revision petition, it would be expedient to make mention that a preliminary objection has been raised about the maintainability of the present revision petition filed by the petitioner.

3. Mr. V. R. Mehta, learned Public Prosecutor for the State, urged before me that the instant revision petition is not maintainable in view of the mandatory provisions as contained under Sub-section (2) of Section 397, Cr. PC according to

which, the power of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. According to Mr. Mehta, learned Public Prosecutor, since the impugned orders are interlocutory orders within the meaning of Sub-section (2) of Section 397, Cr. P.C, therefore, the revision petition is not maintainable.

3. A. It is true that the word "interlocutory" has not been defined in the Code of Criminal Procedure but from the texture of the order passed by the learned City Magistrate under Sub-section (1) of Section 145, Cr. PC, the preliminary order to decide the claim of actual physical possession is to be treated as interlocutory order and such interlocutory order attained finality when it is confirmed under Sub-section (6) of Section 145, Cr. PC. Thus, it goes without saying that the order passed under Sub-section (1) of Section 145, Cr. PC is an interlocutory order and no revision lies.

4. Mr. V. R. Mehta, learned Public Prosecutor for the State also invited my attention to the provisions of Sub-section (1) of Section 146, Cr. PC wherein order of attachment can be passed on three grounds; firstly, on the ground of emergency and secondly, if the Executive Magistrate after recording the evidence adduced by the respective parties, decided that none of the parties were in actual physical possession on the date when preliminary order was passed under Sub-section (1) of Section 145, Cr. P.C. and also found none of the parties in possession within two months from the date of the preliminary order and thirdly, after scrutiny of the evidence adduced by the respective parties, he is not able to satisfy himself as to which of them was in actual physical possession at the relevant time, he would pass an order of attachment of the property under Sub-section (1) of Section 146, Cr. PC. It is true that other categories of the order of attachment passed under Sub-section (1) of Section 146, Cr. PC are final orders but if attachment order is passed on the ground of emergency, it must be treated as interlocutory order and the revision does not lie.

5. Mr. N. P. Gupta, learned counsel for the petitioner invited my attention to the memo of revision, where in the last para of the grounds, it is mentioned that if no revision lies u/s 397, Cr. PC then the present proceedings may be converted into a proceeding u/s 482, Cr. PC.

6. I have given my thoughtful consideration to the rival contentions raised at the Bar and I am of the opinion that in the interest of justice, it would be expedient to convert the present proceedings u/s 397, Cr. PC to a proceeding u/s 482, Cr. PC. In my humble opinion, if both the impugned orders are allowed to stand, it would amount to abuse of the process of the Court, therefore, in order to keep the orders of the learned City Magistrate within its jurisdictional limit and also to prevent abuse of the process of the Court and to secure the ends of justice, I hereby direct to convert the present proceedings u/s 397, Cr. PC into a proceeding u/s 482, Cr. PC. In my considered opinion, both the orders impugned in the instant revision are interlocutory orders and against such orders, no revision lies under Sub-section (2) of Section 397, Cr. PC.

7. Now, before entering into the merit of the present proceedings converted into a proceeding " u/s 482, Cr. PC, I propose to give brief facts leading to the present controversy.

8. The parties to the proceedings are Dawoodi Bohras and there is a large settlement of Dawoodi Bohras in Udaipur. The spiritual leader and religious head of the Dawoodi Bohra Community, which is a religious denomination, is the 52nd Dai-ul-Mutlaq. His Holiness Dr. Syedna Mohammed Burhanuddin Saheb. The Dawoodi Bohra Community consists of Muslims of Shia Sect, holding in common with all members of that Sect. They believe that there is one God; that Mohammed is His prophet to whom He revealed the Holy Book (Quran); that AH, the son-in-law of Mohammed was the "Wasi" (Executor) of the latter and, that AH succeeded Mohammed Nas-e-Jali. In common with all members of this Sect, Dawoodi Bohras believe that Ali, son-in-law of Mohammed was succeeded by line of Imams, each of whom in turn was appointed by Nas-e-Jali by his immediate predecessor. At a later date, the Shia Sect itself came to be divided into two Sects known as Ismailia and Ishna Ashria. Dawoodi Bohras belong to the former Sect and in common with all other members of the Ismailia Sect believe that owing to persecution. Imam Tayab (the 21st Imam) went into seclusion and that an Imam from his line will appear, it being their belief that an Imam always exists (though at times he may be invisible to his believers while in seclusion); that owing to the impending seclusion of the 25th Imam, his predecessor the 20th Imam directed his Mujjat (a dignitary ranking next to an Imam) One Hurra-tul-Maleka to appoint a Dia (Missionary), a Mazoon (a dignitary ranking next to a Dai) and Mukasir (a dignitary ranking next to a Mazoon) to carry on the Dawat of the Imam so long as the Imam, who remains in seclusion and to take and receive from the faithful an oath of allegiance. The Dias are known as "Dai-ul-Mutlaq". Thus, the Dia is the representative of the Imam and conveyed God's message to His people. The powers of the Dai are approximated to those of the Imam. When the Imam comes out of seclusion, the powers of the Dai would cease.

9. Now, it has been decided judiciously that the entire management and control of the Moiyatpura Mosque in question vest in Dai-ul-Mutlaq, who is the sole trustee. The sole trustee has his Head Office at Badri Mahal, Bombay.

10. After giving brief history of Dia-ul-Mutlaq (hereinafter referred to as "the Dia"), I propose to give chequered history of litigation between two Muslim Groups of District Udaipur.

11. A Civil Original Suit No. 69/82 was filed by the petitioners against the contesting respondents along with an application under Order 39, Rules 1 and 2, CPC for grant of temporary injunction. The said application for temporary injunction was registered as Misc. Civil Case No. 53 of 1982. The aforesaid Civil Original Suit No. 69/82 along with Misc. Civil Case No. 53/82 was filed before the learned District Judge, Udaipur. In the said proceedings, at the request of the petitioner, His Holiness Syedna Dr. Mohammed Burhanuddin Saheb through his

one of the Secretaries Shri Abdullah Bhai has produced a copy of the Agreement dated 11-8-70 between Shri Barkatullah Khan, Minister for power, Law, Judicial Linguistic, Minorities, Legislative Assembly, Prison and Wakfs Government of Rajasthan, Jaipur and representative of His Holiness Dr. Syedna Mohammed Burhanuddin Saheb, the 52nd Dai-ul-Mutlaq and office order dated 25-8-70 signed by the Secretary, Rajasthan Board of Muslim Wakfs, Jaipur for the properties belonging to Dawoodi Bohra Community vesting in Dai-ul-Mutlaq as sole Trustee and the Mosque in question i.e. which means the Moiyatpura Mosque is also included therein.

12. Although the aforesaid Civil Suit No. 69/ 82 is still pending irrespective of the order passed by this Court long back on 22-5-84 directing the learned District Judge, Udaipur to decide the suit itself expeditiously within a period of six months but due to acrobatic legal exercises, the suit could not be decided up till date. However, it is pertinent to mention here that the learned District Judge vide his order dated 31-10-83 refused the application moved by the petitioner under Order 39, Rules 1 and 2 CPC for grant of temporary injunction holding that the petitioner failed to establish the prima facie case in his favour. It is important to mention that the learned District Judge, on the other two counts given a finding in favour of the petitioner holding that the balance of convenience and irreparable loss lies in favour of the plaintiff.

13. Aggrieved against the impugned order refusing temporary injunction under Order 39, Rules 1 and 2 CPC on 31-10-83, a Civil Misc. Appeal No. 5 of 1984 was filed before this Court as contemplated under Sub-rule (1) (r) of Order 43, CPC.

14. The aforesaid Civil Misc. Appeal No. 5 of 1984 came up for decision before Hon"ble M. C. Jain, J. (as he then was) on 22-5-84, who gave the following findings. It would be expedient to reproduce the relevant findings given by the learned Single Judge of this Court on 22-5-84 which would be necessary for disposal of the instant proceedings u/s 482, Cr. PC. The relevant portion of the judgment dated 22-5-84 given by the learned Single Judge is quoted in extenso:- "Apart from that it is most significant to note in this particular case that in all the four mosques, since the dates of their establishment, which, as stated at the Bar by the learned counsel for the defendants, is more than 100-125 years, only those Pesh Imams have been leading the congregational prayers, who have been appointed and nominated by the Dai or the Amil. Thus, the religious practice as part of the religious tenet and doctrine had grown that only those Pesh Imams can lead the prayers, who have the authority or the permission from the Dai or Amil. Such is the religious tenet, doctrine or faith is evidenced by the extracts from the above treatises and from the aforesaid episodes. That apart, the power of management and control of the mosques and to regulate the congregational prayers vests exclusively in the Dai and so in exercise of that power the congregational prayers can only be led by the Pesh Imams appointed and nominated by the Dai or his representative Amil.

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Islamic Law congregational prayers occupy a significant position. The body as a whole assemble and pray and glorify Allah and Islam has lead stress on prayers in congregation. If the members of the Shabab are deprived of their right to offer prayers in congregation under the leadership of Pesh Imam appointed by or under the authority of the Dai, then, it is a specie of injury which cannot be recompensed in any manner. The days of congregational prayers are lost. It may not be a sin to peipetuate deprivation for earning additional merit by offering congregational prayers, according to the defendants, but according to the plaintiffs if they are deprived of this additional merit to be earned, according to their conscience, faith and belief, the injury arising therefrom can only be characterised as an irreparable one."

16. It would be pertinent to quote the operative portion of the afore-mentioned judgment of the learned Single Judge dated 22-5-1984:--

"Accordingly, the appeal is partly allowed and the application of the plaintiffs for the grant of temporary injunction is allowed in part in the manner that the defendants in their personal and in their representative capacity and their servants and agents are restrained from preventing the plaintiffs and the members of the Shabab Group from entering the Moiyatpura Masjid for offering or participating in the Imamat/Jamaat Namaaz led by the Pesh Imam appointed or nominated by and under the authority of the Dai-ul-Mutlaq for attending or participating in any Vaiz, Majlis or other religious functions, gatherings or ceremonies held with the permission or under the authority or under the auspices of the Dai-ul-Mutlaq. They are further restrained from interfering or disturbing the Imamat/Jamaat Namaaz conducted in the said Masjid as stated above or from disturbing or interfering with Vaiz, Majlis or any other religious ceremonies, functions or gatherings held or conducted with the authority or permission or under the auspices of the Dai-ul-Mutlaq. The defendants by themselves and by their servants and agents or any person claiming under or through them or the members of the Bohra Youth Association or the so called Dawoodi Bohra Jarnaat are restrained from holding their separate Imamat/Jamaat Namaaz or from holding Vaiz, Majlis and any other religious functions, ceremonies or gatherings in the Moiyatpura Masjid."

16. It has been brought to my notice by Mr. N. P. Gupta, learned counsel for the petitioner that on 25-5-84 at about 11.30 a.m. a delegation of the loyal followers of Dai-ul-Mutlaq had met the S. P. Udaipur and had also requested to give police protection as the loyal followers of Dai-ul-Mutlaq who wanted to offer Friday prayer behind the authorised Pesh Imam on Shaikh Fakhruddin, who was given permission by the Amil of Udaipur to lead Imamat Namaaz. Thereafter, Shaikh Fakhruddin in the company of 5-6 loyal followers of Dai approached the Moiyatpura Mosque at about 12.30 p.m. on 25-5-84 but number of persons belonging to Bohra Youth Association, who were bound by the order passed by the learned Single Judge dated 22-5-84 had gathered in Moiyatpura street and forcibly prevented Shaikh Fakhruddin and others from entering into Moiyatpura

Mosque and from leading Imamat/ Jarnaat Namaaz. Then on or about 28-5-84, another delegation of the loyal followers of the Dai-ul-Mutlaq also met the Collector, Udaipur; Superintendent of Police, Udaipur; and also the Deputy Superintendent of Police, Udaipur and submitted to each of them copy of the Memorandum dated 28-5-84 along with copy of the order dated 22-5-84 and requested them to give necessary police protection to enable them to offer Imamat/Jamat Narnaaz and for "Vaiz" or "Majlis" or other religious functions and ceremonies with immediate effect. It has also been brought to my notice that the Collector, Udaipur called a joint meeting of both the groups referred above. In the said meeting, the entire matter was discussed and implication of the judgment dated 22-5-84 passed by the learned Single Judge of this Court was also explained to the Collector.

17. I have reason to believe that the District Magistrate-cum-Collector, Udaipur came to the conclusion that there was a serious apprehension of breach of peace between the two groups. The SHO Police Station, Dhan Mandi, Udaipur submitted a report to the City Magistrate Udaipur for initiating the proceedings u/s 145, Cr. PC. On the basis of the aforesaid report, of the SHO about serious apprehension of breach of peace, the City Magistrate, passed a preliminary order dated 29-5-84 u/s 145(1), Cr. PC. Fresh material was again brought to the notice of the learned City Magistrate, Udaipur by the SHO Police Station, Dhan Mandi, Udaipur and on the basis of the additional material, learned City Magistrate Udaipur passed an another order for attachment of Moiyatpura Mosque on 30-5-84 Under sub-section (I) of Section 146, Cr. PC.

18. Now this Court is called upon to decide the legality and propriety of the orders dated 29-5-84 and 30-5-84 passed by the learned City Magistrate, Udaipur.

19. I am constraint to observe that in a democratic country like ours, the supremacy of rule of law should be maintained at all costs and the same cannot be maintained unless the entire might of the State is behind the order and judgment passed by a Court of law. My judicial conscience is pricking to see the prevailing situation at Udaipur irrespective of an order passed by this Court on 22-5-84. The situation which has been brought about as a result of violence cannot be countenanced by a Court of law. In fact, it has to be done by the State machinery. The Court primarily exists for enforcement of right and not for protection of might. The right can be enforced by the Court through the might of the State. Those who defy the commands of the Court can be dealt with in accordance with law and for the enforcement of right, if need be, police aid can be provided.

20. In my humble opinion, when this Court has decided the right of both the contesting parties on 22-5-84, the matter ought to have been come to an end and it was duty of the City Magistrate and other members of the District Administration to maintain the right of successful party and defendant-opposite party should not have been allowed to invoke the aid of police for protection or

learned City Magistrate to neutralise the effect of the judgment of this Court passed on 22-5-84 in S.B. Civil Misc. Appeal No. 5 of 1984 within 7 days. In my considered opinion the proper course, in view of the aforesaid circumstances, open for the City Magistrate, was to see that the defendant-opposite party should not have allowed to act which may occasion a breach of peace or disobedience of the order passed by the learned single Judge of this Court on 22-5-84. In order to meet such eventuality, the City Magistrate has ample jurisdiction to take recourse of Section 107, Cr. P.C. and it was not proper for him to proceed u/s 145(1) Cr. P.C. by passing the impugned preliminary order and an order of attachment of Moiyatpura Mosque in question under Sub-section (I) of Section 146, Cr. P.C.

21. I have further reason to believe that the District Magistrate including City Magistrate, Udaipur are fully aware about the pendency of the Civil Suit No. 69 of 1982, and they are fully conversant with the judgment passed by this Court on 22-5-84, therefore, the District Magistrate as well as City Magistrate, Udaipur have no power or jurisdiction to initiate parallel criminal proceedings u/s 145(1), Cr. P.C. in order to circumvent the order passed by this Court. Learned counsel for the petitioner stated that it amounts to contempt of court. While the contention of the learned counsel for the petitioner has strenuously refuted by Mr. S. K. Goyal, learned counsel for respondent No. 2 saying that if the learned City Magistrate has committed error of judgment, the error of judgment is no offence and it cannot be treated as Contempt of Court.

22. Mr. S. K. Goyal, learned counsel for respondent No. 2 also invited my attention towards the provision of Section 3 of the Judicial Officers Protection Act according to which if some judicial order is passed in bona fide belief then such orders are not open for action against Judl. officer. In my humble opinion, the argument of Mr. Goyal, learned counsel for respondent No. 2 has substance and the act of learned City Magistrate, Udaipur cannot be treated as contempt of court but it can be treated as an error of judgment, which can be set aside and no action is called for.

23. A similar question came up for consideration before the Apex Court in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, wherein their Lordships ruled as under (at p. 753 of Cri LJ):-

"When a Civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding u/s 145 of the Code. There is no scope of doubt or dispute the position that the decree of Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of

receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed."

24. In the light of the aforesaid view expressed by their Lordships of the Supreme Court in the case of Ram Sumer Puri Mahant's case 1985 Cri LJ 752 (supra), I am of the opinion that in the present case, the preliminary order dated 29-5-84 as well as the order of attachment dated 30-5-88 passed by the learned City Magistrate Udaipur are parallel criminal proceedings and such proceedings should not: be allowed to continue.

25. Mr. S. K. Goyal, learned counsel for respondent No. 2 submitted before me that it is not disputed that there is a serious apprehension of breach of peace between the parties and if this Court is not satisfied with the impugned orders passed by the learned City Magistrate, Udaipur u/s 145(1), and Section 146(1) Cr. P.C. then this Court may direct the City Magistrate to convert the present proceedings into a proceeding u/s 147, Cr. P.C. as contemplated in the aforesaid Section.

26. Before discussing threadbare, the contention raised on behalf of respondent No. 2 by Shri Goyal, I would like to discuss as to why the present proceedings should not be converted into a proceeding u/s 147, Cr. P.C. In fact, there are fundamental distinction between the proceedings under Sections 145, 146 and 147, Cr. P.C. As a matter of fact, Mr. Goyal, learned counsel for respondent No. 2 submitted before me that the scope of Section 145 is to decide a tangible right of actual physical possession, while according to him, obstruct right of user is decided u/s 147, Cr. P. C. According to the learned counsel for the respondent, it is true that in a proceeding u/s 146(1), Cr. P.C., the property can be attached but there is no such provision u/s 147, Cr. P.C. for attachment. Now, I propose to summarise the distinction between Sections 145, 146 and 147, Cr. P.C. as follows :-

(a) While under Sections 145 and 146, Cr. P.C. application is always moved where there is a dispute about the actual physical possession between the parties whereas Section 147, Cr. P.C. applies to the right as to the use of land or water claims as an easement or otherwise.

(b) Section 146, Cr. P.C. provides for attachment whereas in Section 147 there is no such provision since it deals with obstruct right of the user.

(c) Section 145 requires to prove about actual physical possession irrespective of legal right to possess based on title but Section 147, Cr. P.C. requires the learned Magistrate to see that if right of the actual user appears to exist irrespective of legal right. The assurance in the former is greater than that of the latter.

(d) In Sub-section (6) of Section 145, Cr. P.C. used the word "shall", which is

always treated to be mandatory while in Sub-section (3) of Section 147, Cr. P.C. used the word "may", which is always directive or discretionary.

27. The controversy between the parties in Civil Suit No. 69 of 1982 as well as in the present proceedings are confirmed regarding right to perform religious ceremony and not about the possession of Moiyatpura Mosque, therefore, in the present set of circumstances, the learned City Magistrate has no authority whatsoever to pass the order under Sections 145(1) and 146(1), Cr.P.C. As regard the second limb of argument of the learned counsel for the respondent to the effect that the present proceedings should be converted into a proceeding u/s 147, Cr. P.C. as contemplated under Sub-section (4) of the said section is not acceptable to me, inasmuch as, the question of user and right to perform religious ceremony has been decided by this Court while disposing of the application filed under Order 39, Rules 1 and 2, CPC on 22-5-84. It is admitted by Mr. N. P. Gupta, learned counsel for the petitioner as well as Mr. S. K. Goyal, learned counsel for the respondent No. 2 that the aforesaid order passed by this Court on 22-5-84 has attained finality. In view of the fact, as the judgment of the learned single Judge has already attained finality between the parties, therefore, the present proceedings cannot be allowed to be converted into a proceeding u/s 147, Cr. P.C. These proceedings are summary proceedings and are subject to regular suit. Since Civil Regular Suit No. 69/82 is already pending between the parties and application regarding user and to perform religious ceremonies had been already decided by a learned single Judge of this Court as long back on 22-5-84 with a direction to the District Judge, Udaipur to decide the Civil Suit between the parties within six months, the present proceedings cannot be allowed to be converted under Sub-section (4) of Section 147, Cr. P.C.

28. There is yet another reason not to permit the present proceedings under Sections 145(1) and 146(1), Cr. P.C. to be converted u/s 147(4), Cr. P.C. inasmuch as, a Civil Regular Suit No. 69/ 82 is still pending between the parties. The parties have already approached the Civil Court in the aforesaid suit before the learned District Judge, Udaipur under Order 39, Rules 1 and 2, CPC and they have fought out their disputed right of user and performance of religious ceremonies in the disputed Moiyatpura Mosque up to this Court and matter for interim injunction has been finally decided by this Court on 22-5-84. In my humble-opinion, when a Civil litigation is pending for property wherein the question of user or possession is involved and has been adjudicated even by way of interim injunction, I see hardly any justification for initiating parallel criminal proceedings either under Sub-section (1) of Section 145 or Section 147, Cr. P.C. I am of the opinion that there is no scope to doubt or dispute that the decree or order of the Civil Court is binding on the Criminal Court and the criminal proceedings including summary proceedings u/s 145 or 147, Cr. P.C. as well.

29. Mr. S. K. Goyal, learned counsel for the respondent is not in a position to challenge the aforesaid proposition that parallel proceedings in the present set of circumstances when manner of user and performance of religious ceremonies

have already been decided by this Court on 22-5-84, can be allowed to be re-agitated in a proceeding u/s 147, Cr. P.C. which itself is subject to a regular suit or proceedings.,

30. Wherever during pendency of the civil suit as in the present case, question about the possession or user is also involved, the parties are at liberty to invoke the jurisdiction of the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property including safeguarding their possession as well as user during pendency of such dispute before the Civil Court. In my humble opinion, multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation, therefore, I am of the opinion, that parallel proceedings should not be allowed to continue by convening the present proceedings under Sections 145(1) and 146(1) to a proceeding u/s 147, Cr. P.C. as suggested by Mr. S. K. Goyal, learned counsel for the respondent.

31. My aforesaid view is buttressed by a decision of the Apex Court rendered in the case of Ram Sumer Puri Mahant 1985 Cri LJ 752 (supra).

In view of the aforementioned discussion, the petition is allowed. The impugned order dated 29-5-84 passed u/s 145(1), Cr. P.C. and order of attachment of Moiyulpura Mosque in question passed u/s 146(1), Cr. P.C. on 30-5-84 by the learned City Magistrate, Udaipur are hereby quashed.

Before parting with the judgment, I would like to observe that a Nation is known by the judiciary it has, the worth of nation is measured by its judiciary, which is known as the ultimate keeper of a nation's conscious, ours is such a judiciary within the frame-work of our Constitution. It ensures to the people of this nation that the freedoms and other rights which are their's under the Constitution will never be allowed to be taken away and that history shall not repeat itself.

Registry of this Court is hereby directed to send copies of this judgment forthwith to the Secretary Homes, Government of Rajasthan, Jaipur, Collector, Udaipur, City Magistrate, Udaipur and Superintendent of Police, Udaipur to ensure the strict compliance of the judgment of this Court dated 22-5-1984 passed by the learned single Judge of this Court in S.B. Civil Misc. Appeal No. 5 of 1984 between the parties, which had admittedly attained finality between them.

After dictation of this judgment in open court, the members of the Bar present in Court-room, made a request to make the judgment "Reportable". Request is allowed and judgment is made "Reportable".