

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH.**

*(Judicial Department)*

**Cr. MQ No.04-B/2021**

**Mst. Bina Shahzada VS: Rauf Khan etc**

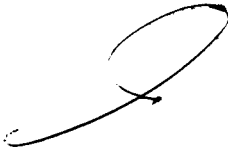
For Petitioners: Mr. Matiullah Jan Khan, Advocate

For Respondents: Mr. Shakirullah Khan, Advocate

For Official Respondents: Mr. Shahid Hamid Qureshi, AAG.

Date of hearing **01.04.2021**

**JUDGMENT**

 **SAHIBZADA ASADULLAH, J.-** Petitioner through this petition under Section 561-A Cr.PC. have called in question the vires of Judgment dated 30.11.2020 passed by the learned Addl. Sessions Judge-V, Bannu, whereby her revision petition against the order dated 14.10.2019 of learned Judicial Magistrate-III, Bannu, stood dismissed.

2. Precise facts of the present petition are that the petitioner filed a complaint against respondents under Section 145 Cr.PC. and contended that her husband died 8/9 months ago and being issue-less, she was residing alone in the house. However, respondents No.1 to 3 forcibly entered

entered in the house as well as her landed property 30/35 days before. Besides, respondents, who are their neighbours, after demolishing the intervening wall of the house took-over possession of a portion of her house. She further asserted in her complaint that elders of the area also gave their verdict in her favour but respondents are adamant on their illegal possession, and there is likelihood of the breach of peace. The learned Judicial Magistrate-III Bannu after requisitioning the report of SHO Police Station concerned, heard arguments of parties and thereafter, dismissed the complaint vide order dated 14.10.2019. The petitioner then preferred a criminal revision which too was dismissed vide Judgment dated 30.11.2020, hence, this Quashment petition.

3. Arguments heard and record percussed.

4. The main grievance of complainant, as divulged from the complaint, is that she was dispossessed from her owned property and she sought restoration of her possession over the suit house as well as the landed property. However, it is an admitted fact on the face of record that the petitioner is an issue-less widow and the property, for which the present complaint was filed, was the property of her husband jointly owned with the present respondents No.1 to 3. As husband

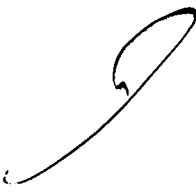
only inherit 1/4<sup>th</sup> from the legacy of her deceased husband. The SHO in his report did not mention any aspect of the breach of peace. The Patwari in his report submitted to the inquiry officer specially mentioned that the property is joint one and no partition has yet been taken place. The petitioner too in her statement affirmed this factum. Now, the question before this Court is whether a criminal Court under Section 145, Criminal Procedure Code, can initiate proceedings and attach the property (land or water) for which no private partition has yet taken place between the parties.

5. Section 145 Criminal Procedure Code is a beneficial section enacted with the express object of preserving the peace. For the attainment of this object emergency provision for attaching the subject-matter of dispute has been provided in it. Under this section the criminal Court can only pass a temporary order and the rights of the parties in fact are to be settled by the Civil Courts. Judicial requirements for assumption of jurisdiction under section 145 Cr.P.C are:

- i. Existence of a dispute.*
- ii. Such dispute is likely to cause breach of peace.*
- iii. Dispute is concerning land, water, building, markets, fisheries, crops*

*or other produce of the land and the rents or profits of such property.*

*iv. Dispossession if alleged is within two months prior to the initial order passed by the Magistrate.*



6. The foremost requirement is the existence of dispute but in this case, according to the record, the dispute is only of civil nature. As to the second & third ingredient, there is no cavil with the proposition that there is no apprehension of any breach of peace and respondents are claiming their joint ownership over an unpartitioned house and property. As far the fourth ingredient is concerned, the petitioner in her application dated 07.08.2019, moved to the SHO Police Station Kakki alleged the date of demolition of wall and her dispossession as 06.08.2019 but in the complaint u/s 145 Cr.P.C. she contradicted the said date by stating it to be 05.08.2019; whereas, in her statement recorded before the Inquiry Officer she mentioned the existence of dispute from the death of her husband 5/6 months before. Thus, in the presence of such contradictory stance the exact date of her dispossession is not known. It can safely be concluded that it is a dispute of partition between parties, and there is no possibility of the breach of peace and thus the scope for the

Criminal Court to act under Section 145, Cr.P.C. has thus been vanished. Jurisdiction of the criminal Court cannot be invoked except on the ground of likelihood of breach of peace. While rendering this view, I am fortified by the dictum laid down in the case of "*Municipal Committee Kohat Vs. Mst. Piari*" (AIR 1947 Peshawar 8) wherein it was held:

*"It appears from the order of the trial Court that though the parties were at issue so far as the question of the apprehension of the breach of the peace is concerned, he gave no finding on it. The mere existence of a dispute between the parties does not justify the exercise of jurisdiction conferred by S. 145, Criminal P.C. on the Criminal Courts. The only justification for an order by a Criminal Court under S. 145, Criminal P.C. is the danger to public peace. The absence of any findings to the effect that there was any such apprehension vitiated the order. The settlement of dispute relating to property which are not likely to lead to a breach of the peace is within*

*the exclusive jurisdiction of the Civil Courts. The jurisdiction of the Criminal Courts cannot be invoked except on the ground of the likelihood of a breach of the peace.* (my emphasise)

7. In "*Shamsuddin Ismail and others vs. The State*" and others PLD 1969 Kar. 515 a similar view was taken and the order passed by the Magistrate was set aside and it was observed:

*"Satisfaction of Magistrate from police report or other information that dispute likely to cause breach of peace exists or existed-- -Condition precedent to exercise of jurisdiction under section --- Complainant nowhere alleging in complaint that dispute likely to cause breach of peace exists or existed--- Magistrate, in circumstances, held, could not take cognizance of case nor could he pass attachment order under subsection (4)---Magistrate would still have no jurisdiction should allegations be not supported by evidence. "*

8. The object of Section 145 Cr.P.C. is prevention of breach of peace arising in respect of dispute relating to immovable property. Settlement of dispute relating to property which is not likely to lead to breach of peace is within exclusive jurisdiction of Civil Court. Guidance in this regard is derived from the case of "**Qazi Gran v. Muhammad Jan**" (PLJ 1996 S.C. 1142) wherein the august Apex Court was of the view:

*Section 145 Cr.P.C. deal with the procedure where dispute concerning immovable property is likely to cause breach of peace. It does not suffice for proceedings under this section that there should be a dispute but it is necessary also that there should be a dispute likely to cause a breach of peace. The primary object of provision is the prevention of breach of public peace arising in respect of dispute relating to immovable property. The settlement of dispute relating to property which is not likely to lead to a breach of peace is within the exclusive jurisdiction of the civil court. If*

*there was/is no imminent danger to the public peace, the magistrate need not to determine the factum of actual physical possession of the dispute property/land.”*

9. This view was also adopted by this Court in the case of *Shamshamir Khan Vs. The State and 6 others* (PLD 1999 Peshawar 70), in the following manner:

*“16. As a result of above discussion, I am of the considered view that the dispute between the parties being totally of civil nature, could not be made a ground for proceedings under section 145, Cr.P.C. and such proceedings would mean nothing but to harass the petitioner. The primary object and scope of section 145, Cr.P.C. is the prevention of breach of public peace arising in respect of dispute relating to immovable property. Settlement of dispute relating to property, which is not likely to lead to a breach of peace is within the exclusive jurisdiction of Civil Court. Where there is no imminent danger, as in this case, to the*



*public peace, Magistrate need not take cognizance of an application under section 145, Cr.P.C.”*

10. The august Supreme Court of Pakistan in the case of *Chaudhary Munir Vs. Mst. Surriya and others* (PLD 2007 Supreme Court 189) provided further guidance while dealing with the matters concerning Section 145 Cr.P.C. The citation (b) of the referred case runs as under:

**(b) Criminal Procedure Code (V of 1898)---**

*---S. 145---Prevention of breach of peace---Powers---Object and scope--- Prime object of proceedings under S.145, Cr.P.C. is to prevent breach of peace and to maintain status quo till the controversy is decided by civil Court of competent jurisdiction---Purpose of proceedings under S.145, Cr.P.C. is to meet an emergent situation in order to maintain peace and further to enable parties to set the controversy at naught through civil Court regarding title or claim of property in dispute---It is mandatory requirement*

*of S.145, Cr.P.C. that there must not only be a dispute but it is essential that a dispute is likely to cause breach of peace.*

11. Further guidance may also be derived from the case of "*Husein Ali J. Merchant Vs. The State & 2 others*" (2003 YLR 1742) wherein it was held that the provisions of section 145 Criminal Procedure Code, are designed to meet an emergent situation only causing threat to the peace and the same cannot be used for settling the rights of the parties on their claim of title. The relevant excerpts from para-6 of the referred judgment runs as under:

*The applicant is not residing at the alleged disputed property although the applicant has possession of one room in the said house. At present there is no material that any apprehension of breach of peace arising between the parties. The provisions of section 145, Cr.P.C. is designed to meet an emergent situation only pausing threat to the peace and cannot be used for settling the rights of the parties on their claim of title.*

12. The law, as settled in *Muhammad Iqbal Jaffer Vs. The State & 6 others*, PLJ 1989 Cr. C (Karachi) 448 clearly gets attracted in the present case. The relevant excerpt is as under:

6. *The perusal of the application made under Section 145 Cr.P.C. by respondents No. 2 to 6 further reveals that there is no allegation that respondents No.2 to 6 are asserting their rights of whatever nature including the right of possession over the properties in question, causing apprehension of breach of peace. The dispute over the possession of business does not constitute the essential elements of sub-section (1) of Section 145 Cr.P.C. Mere existence of a dispute between the parties over business does not justify the exercise of jurisdiction conferred by Section 145 Cr.P.C. on certain magistrates.*

7. *All the dishonest acts in business dealings are not criminal. Likewise, a dispute concerning the business is not a subject matter relating to proceedings under section 145 Cr.P.C. The*

*criminal Court cannot be used to settled a civil dispute. The proceedings taken against the applicant and his wife under Section 145 Cr.P.C. are thus a clear abuse of the process of law. Accordingly, both the applications filed under section 561-A Cr.P.C. are allowed and the proceedings against the applicants are quashed.*

13. Considering the above facts and circumstances, petitioner has failed to point out any illegality or infirmity committed by both the learned courts below while passing the impugned judgments, which do not call for any interference by this Court. Consequently, impugned judgments passed by both the Courts below are maintained and instant quashment petition stand dismissed being devoid of merits.

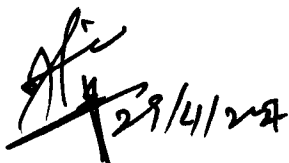
**Announced.**

01.04.2021

\*Azam/P.S\*



**JUDGE**



SCANNED

29 APR 2021

  
Khalid Khan

(S.B) Hon'ble Mr. Justice Sahibzada Asadullah