

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CRM(M) No.721/2023

1. Himanshu Gupta, age 32 years
S/o Late Balbir Raj Gupta
2. Bal Krishan Gupta, age 85 years,
S/o Late Mulkh Raj, Both R/o Q.No.125,
Sarwal, New Plots, Jammu.Petitioner(s)

Through: Mr. Atit Sapolia, Advocate

Vs

Sohani Ram, S/o Gian Chand
R/o H.No.21, New Rehari, Jammu. Respondent(s)

Through: Mr. Pawan K Kundal, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**JUDGMENT
(20.09.2024)**

(ORAL)

- 01.** The instant petition has been filed by the petitioners herein under Section 482 CrPC while invoking inherent power of this Court seeking quashing of the order dated 24.07.2023 (for short **the impugned order**) passed by the Court of Additional Sessions Judge, Jammu (for short **the Revisional Court**) in Revision petition titled as "**Sohani Ram vs Himanshu Gupta & Anr**".
- 02.** Facts emerges from the record would reveal that the respondent herein while claiming to be the tenant of the petitioners herein of a shop situated at Sarwal, Jammu alleged that during the intervening night of

17/18.11.2022, came to be forcibly dispossessed by the petitioners herein from the said shop, filed proceedings under Section 145 CrPC before the Tehsildar Jammu on 19.01.2023, stating further that an FIR being No.197 for offences under Sections 457,427,506 came to be got registered by him against the petitioners herein and that owing to the said reason there is every likelihood of breach of peace on spot.

- 03.** The Tehsildar Jammu upon entertaining the said proceedings under Section 145 CrPC filed by the respondent herein sought a report from the Naib Tehsildar, Jammu Khas and upon receipt of the same on 10.01.2023 as also on the basis of an enquiry conducted and the statements recorded of the parties ordered vide order dated 19.01.2023 that since the parties are litigating before the civil Court with respect to the said suit shop, as such, the proceedings shall await outcome of the said civil suit.
- 04.** Aggrieved of the aforesaid order of the Tehsildar dated 19.01.2023, the respondent herein preferred a revision petition before the revisional Court on 01.02.2023, which revision petition came to be disposed of in terms of the impugned order by the revisional Court and while setting aside the order of the Tehsildar dated 19.01.2023, the revisional Court directed the Tehsildar to proceed further in the matter.
- 05.** The petitioners herein aggrieved of the order of the revisional Court have challenged the same in the instant petition on the multiple grounds urged in the petition.

Heard learned counsel for the parties and perused the record.

06. Perusal of the record in general and the impugned order passed by the revisional Court in particular though tends to show that the revisional Court has rightly set aside the order of the Tehsildar, yet the revisional Court has wrongly made observations and recorded findings that the petitioners herein have taken law into their own hands by locking the shop in question which observations and findings, the revisional Court could not have made or recorded having regard to the nature of proceedings being the one under section 145 CrPC, and ironically it also transpires from the perusal of the impugned order that the revisional Court had directed the locking of the shop in question during pendency of the revision petition and upon its disposal directed the SHO Police Station, Bakshi Nagar to unlock the shop and make a list of articles lying in the shop and then again lock the shop and has finally directed the Tehsildar to decide the question of possession.

07. It is significant to mention here that Section 145 CrPC provides for a summary procedure to bring an end to the disputes relating to the land, building etc, etc and to check the breach of peace which takes place over the possession of such land or building. A Magistrate under Section 145 CrPC has to decide as to which party was in possession of the disputed property on the date of the application or two months prior thereto.

It is also worthwhile to mention here that the proceedings under Section 145 CrPC cannot be made a substitute for an action of recovery of possession of a property where the dispute pertains to the title of the parties over the said property as the scope of enquiry under Section 145 CrPC is limited to the question as to who was in possession on the date

of application or two months prior thereto irrespective of the question as to rights of the parties.

08. Having regard to the facts and circumstances noticed in the preceding paras, inasmuch as, the aforesaid position of law, the instant petition deserves to be allowed in so far as challenge to the impugned order qua the aforesaid observations made and the findings recorded by the revisinoal Court including the directions of locking of the shop, unlocking of the same and making of the list of items lying in the shop by the SHO concerned are concerned, as such, the impugned order to that extent is set aside and the impugned order to the extent the revisional Court directed the Tehsildar to decide the question of possession afresh is upheld.

09. Disposed of.



सत्यमेव जयते (JAVED IQBAL WANI)
JUDGE

JAMMU
20.09.2024

Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes

