AMENDMENT IN SECTION 145

OF THE Cr. P. C.

Zafar Iqbal Kalanauri
Advocate Supreme Court Pakistan

Section 145 of the Criminal Procedure Code 1898 (Cr.P.C.) is designed to prevent a breach of peace over a dispute related to immovable property. An extract of the relevant provision is produced below:

> "Section 145. Procedure where dispute concerning land, etc., is likely to cause breach of peace…(1) Whenever a District Magistrate, (or Sub-divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf) is satisfied from a police-report or other information that a dispute likely to cause breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction he shall make an order in writing, stating the grounds of being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute."
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> (2)……
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> (3)……
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> (4)……
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> Provided that, if it appear to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:"

This proviso has been the cause of some concern, in particular the period prescribed for restoration of possession i.e. "within two months next before the date of such order", as it is has

been interpreted differently by different courts. The ambiguity in the language and its somewhat strict interpretation by the courts, at times results in the negation of a vested right. The issue was examined by the Supreme Court in the case of Muhammad Shafiq v Abdul Hayee (1987 SCMR 1371).

The brief facts of the case are that one Muhammad Shafiq was dispossessed of his possession on 1.11.1984. On 27.12.1984, Muhammad Shafiq initiated proceedings U/S 145 of the Cr.P.C. before the IIlqa Magistrate by filing an application. The Illaqa Magistrate called report, which was submitted by the police on 13.1.1985. The police officer also submitted on 1.2.1985 a report that till the decision in the case the shop be sealed. The learned Magistrate passed the preliminary order on 18.2.1985 for sealing the shop. Subsequently, by order dated 20.7.1985 the ejectment order passed on 18.2.1985 was withdrawn and the property was restored to Messrs. Rahimullah, Abdul Hayee and others who were in physical possession of shop on the date the preliminary order was passed. The extract containing the reasons given by the learned Magistrate is reproduced as under:

> “ On 1.11.1984 Rahimuddin, Abdul Hayee and others wrongfully and forcibly dispossessed Muhammad Shafiq son of Muhammad Rafiq and others. On 18.2.1985 the learned Magistrate passed the preliminary order. It shows that the preliminary order was passed 3 months and 17 days after the date Muhammad Shafiq was wrongfully dispossessed. Muhammad Shafiq dispossessed of the property moved the Court to take action under this section within two months of his dispossession but my learned predecessor did not pass a preliminary order until after the expiry of 2 months of such possession. I do not find myself on good legal ground to dilate on the way the proceedings were drawn under 145, Cr.P.C. by my learned predecessor. But I feel at this stage, that legally this Court, in these circumstances, has no power to restore possession to Muhammad Shafiq and others who were wrongfully and forcibly dispossessed of their Shop No. U/281A, Mochi Bazar, Rawalpindi, on 1.11.1984; whereas the preliminary order was passed on 18.2.1985. The record shall show that on 18.2.1985 when the preliminary order was passed and even 2 months preceding this order Rahimuddin and

Abdul Hayee etc. were in physical possession of the Shop No. U/281A situated in Mochi Bazar, Rawalpindi."

A revision was filed in the Court of the Sessions Judge, Rawalpindi which was accepted by the Additional Sessions Judge with the following observation:

"I hold that the impugned order is illegal to the extent that the petition was not filed within time. I hold that according to the above-said citation referred to above by the learned counsel for the petitioner, the application Ex. P.A. was filed within sixty days on 27.12.1984 from the date 1.11.1984, the date of forcible and illegal dispossession of the petitioners by the respondents."

A petition U/S 561-A of the Cr.P.C. was filed by the respondents. The petition was allowed by the High Court setting aside the order of the Additional Sessions Judge and restoring the order of the Magistrate and came to the following conclusion:

"Inherent powers under section 561-A, Cr.P.C. are such available qua a revisional order, passed under section 439-A, Cr.P.C. as against any other order…finding of the learned Additional Sessions Judge, that since application under section 145, Cr.P.C. was made within two months of the dispossession of the respondents, it was within time is utter disregard of the relevant provisions of law, namely, first proviso to subsection (4) of section 145. It has also been noted that the final order passed by him is without jurisdiction because the respondents were not in possession of the disputed property within two months next before the making of the preliminary order. Order of the learned Additional Sessions Judge regarding restoration of possession, therefore, amounts to abuse of process of law and it is necessary to quash it with a view to securing the ends of justice. Accordingly, it is a fit case for exercise of inherent powers under section 561-A of the Cr.P.C".

As a result of the ambiguity in law, litigation reached up to the apex court i.e. Supreme Court and was finally decided in the year 1987. As a result, the poor litigants had to wait for long and spend huge amounts of money on litigation. Similar situations were confronted by the high courts in Pakistan and India. A full Bench of the Indian High Court in case Ganga Bux Singh v Sukhdin (AIR 1959 All 141) observed:

> "From the nature of the provision it is clear that the Magistrate has been given this power primarily to preserve peace. The individual rights are affected only incidentally.
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> The nature of the inquiry is quasi-civil. It is an incursion by the criminal court in the jurisdiction of the civil Court. It is, therefore necessary that this incursion should be carefully circumscribed to the extent absolutely necessary discharging the function laid down on the Magistrate of preserving the peace. The provisions of S.145 of the Code of Criminal Procedure make that amply clear. The Magistrate does not enquire into the merits of the claim of the parties or even their right to possess the subject of the dispute. He is only concerned with the question as to who was in actual physical possession on the question as to who was in actual physical possession on the relevant date. This also indicates that the starting point of the proceedings must be the date when he was satisfied that an apprehension of a breach of the peace existed and not when he received the first information.
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> It is clear that the parties have no right to get their dispute adjudicated upon by the Magistrate. Even on the receipt of the application the Magistrate may not think any action necessary. He may not take any action at all under S.145 of the Code of Criminal Procedure".

As regards the language and the scope of the proviso under consideration, the Indian High Court observed:

> "The proviso itself does not vest any right in the party interested. This being a discretionary provision it is only just and proper that the discretion should be circumscribed within narrow limits and once circumscribed, the limits have to be strictly observed. The Legislature in its wisdom vested only a limited discretion and we can see no reason for further extending the period for the exercise of this discretion by deeming that the preliminary order was passed on the date of the original application."

The same provision was considered by the Lahore High Court in the case of Fazal Din v The State (1982 Cr.L.J. p.277) as under:

> "The principles of equity or the doctrines of nunc pro tunc and actus curiae neminem gravabit, cannot be applied to an order passed by a Magistrate under section 145 (4). No doubt contrary view was taken by Madras High Court in the case of Chunchu Narayana and others v. Karrapati Kesappa AIR 1931 Mad. 500, but this view was dissented by the learned Judges of Orissa and Andhra High Court in cases reported in Gangadhar Singh and others v. Shyam Sunder Singh AIR 1958 Orissa 153 and Padmaraju Subba Raju and others v. Padmaraju Koneti Raju and another AIR 1995 Andhra 99. As far as the superior Courts of Pakistan are concerned, the view which was prevailed throughout is that the provisions of section 145, Cr.P.C. are to be construed literally. Reference may be made to Ch. Muhammad Siddiq v. Sahibzada Sahibyar Khan PLD 1963 W.P, B.J. 26; Nawabuddin v. Abdul Ghafoor 1968 P Cr. L J 35 and Mst Zohra Bai alias Fatima Sughar v The State and another 1973 P Cr. L J 317."

The Supreme Court of Pakistan while disposing of the criminal appeal in Muhammad Shfiq v Abul Hayee (1987 SCMR 1371), discussed various case law on the subject and observed:

> "It is important to note that Legislature's intervention was considered necessary and was forthcoming in the form of an amended proviso in the following words in the Code of Criminal Procedure enacted in India in 1973--

"Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two month next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of this order under subsection (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under subsection (1)."

It follows that notwithstanding the filing of the application within two months of dispossession if such dispossession not within two months of the order passed by the Magistrate under subsection (1) of follows section 145, Cr.P.C. restoration of possession cannot be ordered and an order to the contrary would not be in accordance with the provisions of the Code. In that situation the very first jurisdictional requirement for interference under section 561-A would be amply satisfied and the High Court was justified in invoking that power to correct the obvious legal error committed by the Additional Session Judge while interfering in revision with the order of the learned Magistrate. For the reason this appeal must be dismissed as without merit".

It is, thus, obvious that the said proviso of section 145 of the Cr.PC is vague and liable to create mischief. It is therefore suggested that it may be amended on the lines of amendment carried out in India. This will save the litigants from avoidable hardships, expenses and delays and save the precious time of the courts. The existing and (proposed) amended versions are as under:

Existing:

"Provided that, if it appear to the Magistrate that any party has <u>within two months next before the date of such order</u> been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been I in possession at such date".

Proposed:

"Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under subsection (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub section (1)."