

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

**Justice Qazi Faez Isa, C.J.**

**Justice Amin-ud-Din Khan**

**Justice Athar Minallah**

**CIVIL PETITION NO.116 OF 2020**

*(Against the judgment dated 19.11.2019 of the High Court of Baluchistan, Quetta passed in Constitution Petition No.317 of 2019)*

Aminullah and others ...Petitioners

**Versus**

Syed Haji Muhammad Ayub and others ...Respondents

For the Petitioners: Mr. Kamran Murtaza, Sr.ASC  
Syed Rifaqat Hussain Shah, AOR

For respondent No.1: Mr. Abdul Hadi Tareen, ASC

Date of hearing: 16.11.2023

**ORDER**

**Athar Minallah, J.** The petitioners are residents of Killi Huramzai, Tehsil Huramzai, District Pishin (**'the petitioners'**). They have sought leave against the judgement dated 19.11.2019 whereby the High Court, while exercising its extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**'the Constitution'**), has allowed the petition filed by Haji Muhammad Ayub, son of Haji Muhammad Raza (**'the respondent'**).

2. The respondent had filed a complaint on 14.5.2018 before the Judicial Magistrate, Huramzai, District Pishin seeking initiation of proceedings under section 145 of the Code of Criminal Procedure, 1898 (**'Cr.P.C.'**). He had asserted to be the owner of the property which was described in the complaint. He had further stated that the property was given on rent to various persons from time to time for the last many years while the last tenancy agreement was executed with one Kaleemullah, son of Qurban Ali and the possession was also handed over to him. It was alleged that the petitioners had illegally taken possession of the property by putting locks from the

outside on 09.5.2018 and thus he had been dispossessed. The Judicial Magistrate entertained the petition and, after completing protracted proceedings, the complaint was accepted vide order dated 28.11.2018 and consequently the Tehsildar was directed to restore the possession of the property to the respondent. The petitioners challenged this order and their criminal revision was allowed by the Additional District Judge, Pishin vide order dated 18.2.2019. The respondent then invoked the jurisdiction of the High Court vested in it under Article 199 of the Constitution and the petition was allowed vide the impugned judgment dated 19.11.2019.

3. We have heard the learned counsels for the parties. The questions that have arisen for our consideration are regarding the competence of the Judicial Magistrate to entertain the complaint and, whether in the facts and circumstances, the jurisdictional requirements for undertaking proceedings under section 145 of the Cr.P.C. were met. The learned counsel for the petitioners has correctly pointed out that section 145 of the Cr.P.C was amended through the Baluchistan Act 2010 with effect from 10.12.2010 and the expression "District Magistrate or Sub-Divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf" was inserted by substituting the omitted expression. The Judicial Magistrate was, therefore, bereft of jurisdiction to entertain the complaint and to exercise the powers under section 145 of the Cr.P.C. It would be pertinent to briefly analyze section 145 of the Cr.P.C. It contains ten sub-sections. Sub-section (1) empowers the competent Magistrate to make an order in writing, requiring the concerned parties involved in the dispute to attend the proceedings in person or by a pleader, provided the Magistrate is satisfied that such a dispute is likely to cause a breach

of peace concerning any land or water or the boundaries thereon. The three crucial jurisdictional pre conditions to entertain a complaint or proceed under section 145 are; existence of a dispute, the dispute must be of a nature that is likely to cause a breach of the peace and, lastly, it must relate to land, water or its boundaries. The purpose of making such an order is to enable the parties concerned to put in their respective statements of claims regarding the fact of actual possession of the subject of dispute. Subsection (2) describes the expressions 'land' and 'water'. Subsection (3) prescribes the manner for the purposes of service of summons. Subsection (4) provides that after passing an order under sub-section (1) the Magistrate, without reference to the merits or the claims of the concerned parties regarding the right of possession of the subject of dispute, peruse the statements, hear the parties, receive evidence, consider the effects of the evidence so as to decide whether any and which of the parties was, at the date of the order passed under subsection (1), in possession of the land. Sub-section (4) has two provisos. The first proviso contemplates that if it appears to the Magistrate that any party, within the period of two months before the date of such order i.e. an order under sub-section (1), has been forcibly and wrongly dispossessed, shall treat the party so dispossessed as having been in possession on the date of passing the order. The second proviso empowers the Magistrate to attach the subject of dispute pending his decision referred to in sub-section (4). However, such power is subject to the satisfaction of the Magistrate that in his or her opinion it is a case of emergency. Sub-section (5) further empowers the Magistrate to cancel an order passed or to stay further proceedings in the eventualities expressly described therein. Sub-section (6) explicitly provides that the party, which has been determined to be in possession, shall be declared to be entitled to retain the same until

evicted in due course of law. It is further provided that, in the event of a determination made under the first proviso of sub-section (4), the possession is required to be restored in favour of the person who was forcibly and wrongfully dispossessed. Sub-section (7) deals with the eventualities when a party dies during the proceedings. Subsection (8) empowers the Magistrate to deal with the goods or items which are subject to speedy and natural decay. Subsection (10) explicitly provides that the powers under section 145 are not in derogation of the power vested under section 107 of the Cr.P.C. It is noted that section 107 of the Cr. P.C. vests the power in a Magistrate to take appropriate measures to prevent a person who is likely to commit a breach of the peace etc. Section 151 empowers a police officer who knows of a design to commit any cognizable offence to arrest a person so designing without the permission or obtaining warrant from a Magistrate, if it appears to him/her that the commission of the offence cannot be otherwise prevented.

4. It is obvious from the above analysis that the nature of proceedings under section 145 of the Cr.P.C. are more in the nature of an executive function because the right of ownership nor that of possession is adjudicated. The exercise of the powers are subject to fulfilment of the jurisdictional pre-conditions, particularly the satisfaction of the Magistrate that the dispute is likely to cause a breach of the peace. This Court has interpreted section 145 of the Cr.P.C. in various judgments.<sup>1</sup>

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<sup>1</sup> *Muhammad Ishaque Chowdhury and another v. Nur Mahal Begum and others* (PLD 1961 Supreme Court 426), *Muhammad Boota and 12 others v. Ch. Faiz Muhammad and 8 others* (1970 SCMR 592), *Haji Muhammad Akram and others v. Mir Baz and others* (1973 SCMR 236), *Shera and others v. Mst. Fatima and another* (1971 SCMR 449), *Shah Muhammad v. Haq Nawaz and another* (PLD 1970 Supreme Court 470), *Mirza Abdul Razzaq v. Barkat Ali and others* (1985 SCMR 1235), *Yar Muhammad and others v. Gul Muhammad* (1985 SCMR 1609), *Malik Manzoor Elahi v. Lala Bishambar Dass* (PLD 1964 Supreme Court 137), *Mehr Muhammad Sarwar and others v. The State and 2 others* (PLD 1985 Supreme Court 240), *Muhammad Shafique and others v. Abdul Hayee and others* (1987 SCMR 1371), *Ganga Bux Singh v. Sukhdin* (AIR 1959 all. 141) and *Mukhtar Ahmad and others v. Haji Muhammad Saleem and another* (2013 SCMR 357).

5. The main object and purpose of the powers vested under section 145 of the Cr.P.C. is to prevent a likely breach of the peace and to maintain the status quo. The parties are provided an opportunity to resolve the dispute regarding the title or right of possession before a competent forum. The most crucial factor for undertaking the proceedings is the likelihood of breach of the peace because of the dispute. The dispute must be in respect of land or water or boundaries thereof and the subject matter must be situated within the limits of the territorial jurisdiction of the Magistrate who has to exercise the powers. The existence of these factors is a pre-requisite for making a preliminary order under sub-section (1) of Section 145 of the Cr.P.C. and the grounds required to be stated in the order must justify the satisfaction of the Magistrate. The mere existence of a dispute is not sufficient to put the powers in motion. There must be sufficient material giving rise to an imminent danger or a breach of the peace. In the absence of such an apprehension of a breach of the peace the exercise of the power would not be lawful. Moreover, the exercise of powers under section 145 will not be justified if the factor of breach of the peace can be prevented by resorting to powers vested under section 107 of the Cr.P.C. While conducting an inquiry under section 145 of the Cr.P.C. the Magistrate does not have the power or jurisdiction to decide either the question of title of property or the lawfulness of the possession. It merely empowers the Magistrate to regulate the possession of the property in dispute temporally in order to avert an apprehension of breach of the peace. The attachment of the property under the second proviso of section 145 (4) is subject to the satisfaction of the Magistrate that a case of emergency has been made out. The Magistrate, while exercising powers under Section 145 of the Cr.P.C, is merely required to declare which one of the parties is entitled to remain in possession

because, as already noted, the proceedings do not empower undertaking an inquiry relating to ownership or the right to possess.

6. In the case in hand, the Judicial Magistrate was bereft of jurisdiction nor was he empowered to exercise the powers under section 145 of the Cr.P.C. Notwithstanding the lack of jurisdiction, the Judicial Magistrate also did not appreciate that the jurisdictional requirements were not in existence. The respondent, according to his own stance, was not in possession, rather it was handed over to the last tenant. The dispute was not likely to cause a breach of the peace and the respondent, in his complaint, had vaguely made a reference to it without disclosing any justification relating thereto. The protracted proceedings also established that the vague assertion of breach of the peace was merely an attempt to meet the requirement expressly provided under section 145 of the Cr.P.C. The Judicial Magistrate, despite having no jurisdiction to exercise the powers, had virtually adjudicated the title of the property and the right relating to possession in favour of the respondent. The powers exercised in the facts and circumstances of the case in hand were without lawful authority and jurisdiction.

7. For the above reasons, this petition is converted into an appeal and is allowed and consequently the impugned judgment of the High Court is set-aside.

Chief Justice

Judge

Judge

Announced in open Court on **07.12.2023**  
at Islamabad

Judge.

**APPROVED FOR REPORTING'**

*Aamir Sh. /Rameen Moin LC\**