



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 904/2025

Ramuram S/o Thana Ram, Aged About 62 Years, R/o Nathoosar
Bikaner Rajajsthan

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Seetaram S/o Multanaram, R/o Nathoosar Ps Panchu
District Bikaner
3. Chailu Singh S/o Roop Singh, R/o Nathoosar Ps Panchu
District Bikaner
4. Narpat Singh S/o Chailu Singh, R/o Nathoosar Ps Panchu
District Bikaner
5. Beerbalram S/o Ramuram, R/o Nathoosar Ps Panchu
District Bikaner

----Respondents

For Petitioner(s) : Mr. M.S. Purohit
For Respondent(s) : Mr. Vimal Prakash Chhangani
Mr. Suresh Bishnoi
Mr. N.S. Chandawat, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

DATE OF CONCLUSION OF ARGUMENTS : 29/01/2026
DATE ON WHICH ORDER IS RESERVED : 29/01/2026
FULL ORDER OR OPERATIVE PART : Full Order
DATE OF PRONOUNCEMENT : 03/02/2026

Reportable

BY THE COURT:-

1. The present criminal revision petition has been instituted by the petitioner under Sections 397 read with 401 of the CrPC (corresponding to Sections 438 read with 442 of the BNSS), assailing the order dated 04.07.2025 passed by the learned



Additional Sessions Judge, Nokha, District Bikaner in Revision Petition No. 15/2025, whereby the revision petition preferred by respondent No. 2 was allowed and, consequently, the order of attachment passed under Section 165(1) of BNSS dated 18.06.2025 by the learned Sub-Divisional Magistrate in Case No. 04/2025 came to be set aside.

2. Briefly stating the facts of the case are that a complaint under Section 164 of the BNSS was submitted by the S.H.O., Police Station Panchu, regarding rival claims over the land in question, pursuant to which multiple complaints were lodged by the parties concerned. Upon inquiry, it was reported that the petitioner and certain private respondents were in possession and that the dispute was likely to occasion breach of peace, whereupon the learned S.D.M., by order dated 18.06.2025, directed attachment of the land and appointed the S.H.O. as receiver. The said order was set aside by the learned Additional Sessions Judge on 04.07.2025 in revision preferred by respondent No. 2, giving rise to the present revision petition at the instance of the petitioner.

3. Heard learned counsel appearing on behalf of the parties and perused the material available on record.

4. Before delving into the merits of the present petition, it is pertinent to discuss the legal framework under which the revisional jurisdiction of the Court is invoked. Section 438 of the BNSS, 2023 (corresponding to section 397 Cr.P.C.), outlines the





powers of the High Court and Sessions Court to call for records and revise orders passed by subordinate Courts. This provision plays a crucial role in ensuring that justice is not only done but is also seen to be done by correcting any legal or procedural errors that may have occurred in the lower Courts. To fully appreciate the scope and application of this Section, it is essential to reproduce it here for reference.



438. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on his own bond or bail bond pending the examination of the record.

Explanation. – All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 439.

(2) The powers 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 proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

4.1 The statutory power conferred upon the High Court and Session Court under Section 438 BNSS serves the purpose of examining the legality, correctness, and propriety of orders passed by inferior Courts. This ensures that criminal procedures are



strictly adhered to according to the law, preventing any deviation from legal mandates. Legality entails the correct application and interpretation of legal provisions. It is crucial that Courts do not misunderstand or ignore the law, as any misinterpretation or wrongful application can lead to significant procedural errors. Correctness involves the proper application of facts in accordance with the legal provisions. It is essential that factual determinations align with the governing laws to ensure accurate legal outcomes. Propriety addresses situations where, despite the correct application of law and facts, the resulting outcome is flawed. This could occur when the exercise of legal power is technically correct, and the facts support the decision, but the overall outcome is deemed improper, unfair, or unjust in the broader sense of justice. For an instance, if a husband earning ₹100,000 per month is ordered to pay ₹2,000 as maintenance to his wife, the legal power (legality) is exercised, and the wife's eligibility (correctness) is considered, but the maintenance amount is not proper (propriety) given the husband's income. The Court's power in this context is supervisory and monitoring in nature. Its objective is to ensure that proceedings and orders adhere to the law and principles of justice, leading to the fair disposal of cases. Courts are established to uphold these objectives, ensuring justice is served through lawful processes. The mode of invoking this power can be through applications by parties, or when the Court is made aware of potential errors through publications, complaints, or letters. Upon receiving such information, the Court must satisfy itself regarding





the legality, correctness, and propriety of the order in question. At this point, the Court can also exercise suo moto power to achieve the ultimate objective of justice. When the matter has come up for consideration or facts are brought to the notice of the Court, there is no legal bar in exercising suo moto jurisdiction.

5. Now coming to the issue involved in this petition for which revisional jurisdiction is to be exercised. To start with, it is imperative to discuss the precedents set by Hon'ble the Supreme Court concerning Sections 145 and 146 of Cr.P.C. and to fully comprehend the legal position, it is necessary to first reproduce these provisions, which are provided below for ready reference:-

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression “land or water” includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:





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 sub-section (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).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107.

146. Power to attach subject of dispute and to appoint receiver.—

(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of





dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof: Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908(5 of 1908): Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate—

- (a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;
- (b) may make such other incidental or consequential orders as may be just."

From bare perusal of these Sections, this Court feels that before initiating a proceeding under Section 145 Cr.P.C. or moving an application under Section 146(1) of the Cr.P.C., circumstances suggesting imminent danger of breach of peace or like circumstance to presume instant threat to public peace and tranquility has to be shown with the assistance of cogent and reliable material. It should not be a vague or bald assertion rather should be supported with strong material. The law in respect of proceeding under Sections 145 & 146 Cr.P.C. is no more res-integra that before initiating any proceeding under Sections 145 & 146 Cr.P.C. there has to be a serious question of possession and a situation where it is not comprehensible as to which party was in possession of the land in question at the relevant point of time or the circumstances suggesting that parties are bent upon to take forcible possession of the immovable property and therefore, there





exists before he passes an order of attachment. A case of emergency, as contemplated Under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order Under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

14. We find from this case there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the Appellant - Ashok Kumar, whether it is legal or not, is not for the SDM to decide."

6. Moving to the matter in hand, it is apparent from the record that the SDM passed the impugned order dated 18.06.2025, whereby on the very same day not only was notice purportedly issued, but invoking an alleged emergent circumstance, a receiver was straightaway appointed. A careful perusal of the original file, which has been tagged with the record, reveals that the complaint bears the date 28.05.2025 and is stated to have been submitted by the SHO. However, conspicuously, there is no endorsement of receipt by the Court, nor does the record disclose that the said complaint was ever formally taken on file. The record reveals that a complaint dated 28.05.2025 remains entirely untouched. Even more significantly, no order-sheet was drawn, either separately or on the face of the complaint itself, at any point of time. If, indeed,





the situation was so emergent as to warrant immediate intervention, nothing prevented the authority from issuing notice or passing appropriate orders on 28.05.2025 itself. The interregnum between 28.05.2025 and 18.06.2025 is a substantial period, during which no action whatsoever appears to have been taken. Neither the parties approached the Court, nor did the SHO place any fresh material on record on 18.06.2025. In the absence of any intervening development, it is incomprehensible as to from where and how an emergent circumstance suddenly arose on that date. The record, taken as a whole, does not reflect any situation on 18.06.2025 justifying the drastic step of appointment of a receiver.

7. The Court below has proceeded on conjectures, observing that a dispute may arise, despite there being no material to demonstrate that any incident ever occurred or that the situation warranted preventive action. Such an approach results in an unwarranted assumption of jurisdiction and reflects a mechanical exercise of power. In the absence of any procedural trace, the passing of an order premised on a supposed apprehension of breach of peace and the consequential appointment of a receiver appears wholly unsustainable.

8. This Court finds that the exercise undertaken by the SDM amounts to a clear misuse of power and an abuse of the process of the Court. Upon a close reading of the complaint dated 28.05.2025, it nowhere emerges that any criminal case had ever been registered, that there was any instance of bloodshed, that





the parties had assembled at the property in question, or that there was any grappling, commotion, or disturbance of public peace, violence being far from the record. It is beyond comprehension that in the absence of any actual dispute or law and order situation, the SDM, merely at the behest of the police, could divest persons of possession over immovable property, the property in which civil rights vest, protected not only by statute but also by the Constitution and hand it over to another. Such an approach strikes at the very root of the rule of law and deserves to be deprecated.

9. Even the revisional proceedings arising out of Section 146 CrPC, wherein the learned Additional Sessions Judge remanded the matter, suffer from inherent infirmities. The remand order proceeds on the premise that no complaint dated 28.05.2025 has ever been filed by an SHO and such a complaint does not exist, whereas the document does form part of the case file. The absence of endorsement or order-sheet entries may indicate procedural lapse, but it cannot lead to a declaration that such a document never existed. Before making such categorical observations, the revisional court was expected to exercise due caution and judicial sensitivity, particularly when the record itself tells a different story.

10. This Court is of the view that the power under Section 146 CrPC is not envisaged to be exercised at the whims or sweet will of the Executive Magistrate, nor is it intended to decide rights of possession which fall squarely within the domain of the civil court





after a full-fledged trial. It is well settled that questions relating to right, title, possession and interest fall squarely within the exclusive domain of the competent Civil Court, and it is only such Court which is legally empowered to adjudicate upon the same. Property, being the hard-earned capital and valuable asset of an individual, cannot be lightly interfered with. Handing over possession of such property to a third person, without first determining the rights, title and interest of the parties, is wholly impermissible in law, more so in the absence of any imminent apprehension of breach of peace or bloodshed. Such extraordinary interference may be justified only in a situation where both the rival claimants are poised at the spot, each asserting their respective entitlements, and the circumstances are such that a real and immediate threat of violence or bloodshed looms large. The object and purpose of invoking the said provision is essentially preventive in nature, intended to pacify the situation and to cool off the parties so as to obviate the possibility of any immediate confrontation or breach of peace. The temporary distancing of both parties from the disputed property is contemplated only for a short and limited duration, till such time the competent Civil Court adjudicates upon the rights of the parties. The provision has not been enacted to confer jurisdiction upon the criminal court to determine questions of ownership, possession, or entitlement in respect of immovable property. Its limited aim is to thwart the likelihood of an imminent dispute, to maintain public tranquility, and to prevent any apprehension of bloodshed. The determination





as to who is the lawful owner or who is entitled to possession is a matter squarely falling within the realm of civil adjudication and can be decided only after due process of law by a competent Civil Court. The role of the Executive Magistrate, while passing a preventive order, is thus circumscribed and confined to addressing the apprehension that the rival parties, asserting competing claims, may indulge in violence at the spot. Once such an order is passed, the jurisdiction of the criminal court remains strictly limited and cannot extend beyond the point at which a competent court of civil jurisdiction renders a decision concerning the property. Till such adjudication by the competent Civil Court, the preventive order operates merely as a measure to separate the parties and preserve peace, and not as an instrument to adjudicate or confer any right, title, or interest in the property. In the absence of such compelling and emergent circumstances, divesting a person of possession and placing the property under third-party control would amount to an unwarranted exercise of jurisdiction and a serious infraction of settled legal principles. Accordingly, the order passed under Section 146 Cr.P.C. is liable to be set aside.

11. It is well settled that while exercising revisional jurisdiction, the Court is empowered to act suo motu in exceptional circumstances. The invocation of such extraordinary jurisdiction does not hinge upon a formal application by a party; rather, once an order is brought to the notice of the Court, or otherwise comes within its judicial gaze, the Court is duty-bound to examine its





legality, correctness and propriety. While considering the issue of suo motu exercise of extraordinary jurisdiction, this Court finds that prima facie no material whatsoever exists to satisfy the very object of Section 145 Cr.P.C. The continuation of proceedings under Section 145 before the Executive Magistrate, in such circumstances, would itself amount to an abuse of the process of law. Preventing such abuse is not only within the power of this Court, but is indeed its solemn duty. Therefore, exercising its extraordinary powers, the proceedings under Section 145 Cr.P.C. are also quashed.

12. After considering the facts and circumstances of the case, as well as the legal principles discussed above, this Court finds that, in the absence of any breach of peace or imminent danger thereof, initiating criminal proceedings under Sections 145 and 146 of the CrPC constitutes a misuse of the legal process. In view of the foregoing discussion, Section 146 of the CrPC has already lost its substratum. Consequently, the foundational proceedings under Section 145 CrPC also deserve to be terminated, as their continuance would amount to nothing but an abuse of the process of law. This Court finds that the entire proceedings are vitiated by procedural irregularities and non-application of mind.

13. Accordingly, the revision petition is allowed. The impugned order dated 18.06.2025 passed by the learned Sub-Divisional Magistrate and order dated 04.07.2025 passed by the learned





Additional Sessions Judge, Nokha, District Bikaner are hereby quashed and set aside.

14. It is clarified that if the parties have any inter se dispute relating to civil rights or title, they are at liberty to approach the competent civil or revenue court for adjudication of their rights. However, in the event of any apprehension of breach of public peace between the parties, appropriate action may be taken under Sections 107 and 116, read with Section 151 of the Cr.P.C (corresponding to Sections 126, 135 r/w 170 of BNSS respectively).

15. Stay petition or any pending applications stands disposed of.

(FARJAND ALI),J

222-Mamta/-

