

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b))

Description of case

Crl. Rev. No. 921 of            2001            decided on 26.4.2002  
Jai Prakash                      Vs.            Rajeshwar Prasad & others.

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 26.4.02

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

(Court No.- Hon.C.J.'s Court  
Old Block)

**Criminal Revision No.921 of 2001**

Jaiprakash

-Revisionist.

*Versus*

Rajeshwar Prasad & others

-Respondents.

**Hon'ble Irshad Hussain,J.**

This is a revision under Section 397/401 of the Code of Criminal Procedure (hereinafter in short 'Code') against the judgment and order dated 8.8.2001 passed by learned Additional Sessions Judge/Special Judge (Anticorruption), Dehradun in Criminal Revision No.112 of 2000, Rajeshwar Prasad and others Versus State and others, which was preferred against the attachment order under Section 146 of the Code passed by Sub Divisional Magistrate, Rishikesh in Criminal Case No.44 of 1999, State Versus Rajeshwar Prasad and others, under Section 145 of the Code.

The learned counsel for the parties were heard at length.

Perused the material on record.

The proceedings under section 145 of the Code were initiated on the application of applicant-revisionist Jai Prakash and others against Respondents nos.1 to 3 and in these proceedings order of attachment under section 146 of the Code on account of the case to be one of the emergency as a result of cause of breach of the peace existing concerning the possession of the subject matter of the dispute

between the parties, was passed on 9.6.2000 by the learned S.D.M. Rishikesh (Annexure I to the petition). The opposite party/respondent aggrieved by the order of attachment, preferred Revision which was numbered as 112 of 2000, Rajeshwar Prasad and others Versus State and others and the same was allowed by the impugned judgment and order dated 8.8.2001 and the order of the attachment was set aside. Legality and propriety of this order has been questioned in this petition.

It was argued by the learned counsel for the revisionist that an order passed under Section 146(1) of the Code is an interlocutory order and, therefore no revision against such an order is maintainable and the learned Sessions Judge has acted illegally in holding that the order is not interlocutory and in setting aside the same by the impugned judgment and order. In support of the contention, reliance was placed on the decision in *Kallo and others Versus State of U.P. and others* (1997(35), A.C.C.,206) and also another decision in the matter of *Bhrigu Nath Versus Parmeshwar and another* (1996(33),ACC,426). On the other hand, the learned counsel for the respondents submitted that the impugned judgment and order is just and proper because as held by the Hon'ble Judge of the Allahabad High Court in the matter of *Ram Lachhan Versus State of U.P.* (2000(40),ACC,738), the revision against the order of the attachment was maintainable and the learned Sessions Judge was legally obliged to decide on the propriety and merit of the attachment order.

Having considered the respective submissions in the light of the legal aspect of the case, it may be mentioned at the outset that the

submissions of the learned counsel for the revisionists have force and the revision petition is fit to be allowed.

The reasons are that it is not well settled that an order of attachment of the property under Section 146(1) of the Code made during the pendency of the proceedings under Section 145 is an order purely of intermediate and temporary nature as by the order of attachment neither the respective rights of the parties are adjudicated nor any finding about any legal right is given by such an order. The order does not finally dispose of the pending proceedings and as such the order of attachment is an interlocutory order within the meaning of Section 397(2) of the Code. The Hon'ble Judges in the above mentioned cases cited on behalf of the applicant-revisionists have adverted to various decisions of the Hon'ble Supreme Court about this legal position to bring home consensus about the above legal position with regard to the nature of an order of attachment under Section 146(2) of the Code. A bare perusal of the order of attachment dated 9.6.2000 (Annexure I) makes it obvious that the order was passed as a measure of emergency in view of the cause of breach of the peace existing concerning the subject matter of the dispute. It had not affected the legal rights of the parties to the proceedings and, therefore the same being purely interlocutory order, the learned Sessions Judge was not legally obliged to set aside the same by observing that the order should have been passed after hearing both the parties. In the face of the facts of the case, the decision of the Hon'ble High Court of Allahabad relied upon by the learned counsel for the respondents has no application because facts of the case before the Hon'ble High Court were at variance. In that case, the revisional order of the

learned Sessions Judge in the matter of the order of attachment under section 146(1) of the Code was not held to be improper and infirm on account of the fact that the order of the attachment by the learned Magistrate had been passed during the pendency of transfer application filed against the learned Magistrate by an aggrieved party. It was found that the learned Magistrate had passed the attachment order without waiting for the order in the transfer application filed against him before the District Magistrate. As mentioned above, the facts and circumstances of the instant case are materially different and the order of attachment being purely interlocutory, the same should not have been interfered with by the learned Sessions Judge by invoking the powers under Section 397(1) of the Code.

Lastly it need to be mentioned that the opposite parties/respondents have on 17.02.2000 filed objections and written statement claiming that proceedings under Section 145 of the Code could not have legally been initiated besides on other grounds for seeking cancellation of the order. The same is pending disposal before the learned S.D.M., Rishikesh who shall proceed to decide the case expeditiously preferably within a period of two months from date of receipt of copy of this judgment.

The revision petition in view of the above observations is fit to be allowed.

Revision petition is allowed and the impugned order dated 8.8.2001 of the learned Additional Sessions Judge (Anticorruption), Dehradun passed in Criminal Revision No.112 of 2000, Rajeshwar Prasad and others Versus State and others is hereby set aside.

The learned S.D.M., Rishikesh is directed to decide the proceedings in Criminal Case No.44 of 1999, under Section 145 of the Code on merit within a period of two months from the date of receipt of copy of this judgment.

Nainital.  
April 26, 2002.

**(Irshad Hussain)**