

Court No. - 55

Case :- APPLICATION U/S 482 No. - 11025 of 2002

Applicant :- M/S. Man Kumar Lohiya & Bors.

Opposite Party :- State Of U.P. & Another

Counsel for Applicant :- M.K. Gupta, B.S. Rathore, Jitendra Kumar Sharma, Pankaj Agarwal

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shashi Kant, J.

Cause list has been revised.

As per report of Chief Judicial Magistrate, Ghaziabad dated 14.11.2007, notice has been personally served upon respondent no. 2 Smt. Chandrakanta, but neither she nor any one has appeared on her behalf.

Heard Sri Pankaj Agarwal, learned counsel for the applicant, Sri Vishwa Jyoti Sahai, learned A.G.A. for the State of U.P. and perused the record.

This application under Section 482 Cr.P.C. has been filed for quashing the entire proceedings of Case No. 6 of 2002 - Smt. Chandrakanta Vs. Man Kumar Lohiya, pending before Pargana Magistrate, Hapur, District - Ghaziabad as well as for setting aside the order dated 24.06.2002, passed in the aforesaid case whereby property in dispute has been attached.

Learned counsel for the applicants contended that impugned order dated 24.06.2002 (Annexure-6), passed under Section 146(1) Cr.P.C., by the Pargana Magistrate, Hapur, District - Ghaziabad in Case No. 6 of 2002 - Smt. Chandrakanta Vs. Man Kumar Lohiya, whereby the property in dispute has been attached, without following the procedure or passing an order under Section 145(1) Cr.P.C., as such the impugned order is not sustainable in law and is liable to be set aside.

Learned A.G.A. has opposed the prayer made on behalf of petitioner, but failed to show any legal provision or authority about sustainability of the impugned order.

Considered rival submissions raised by learned counsel for the parties and perused the material available on record.

Section 146(1) Cr.P.C. provides that order for attachment of property under this Section may be passed at any time after making an order under sub-Section (1) of Section 145 Cr.P.C.

Section 146(1) Cr.P.C. reads thus :

"Power to attach subject of dispute and to appoint receiver.

146. (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."*

Considering the facts of the case alongwith averments of the affidavit filed in support of the application, it is apparent that in this case no order under Section 145(1) Cr.P.C. has been passed. In such circumstances the impugned order passed under Section 146(1) Cr.P.C. for attachment of disputed property without passing an order under Section 145(1) Cr.P.C. is not sustainable in the eyes of law and liable to be set aside.

The application is accordingly **allowed**.

The impugned order dated 24.06.2002, passed by the Pargana Magistrate, Hapur, Ghaziabad as well as entire proceedings of Case No. 6 of 2002 - Smt. Chandrakanta Vs. Man Kumar Lohiya, are hereby quashed.

However, the authority concerned will be at liberty to pass fresh order for attachment of disputed property following the procedure prescribed in law, if need arises to do so.

Order Date :- 30.8.2017

A. Verma