

**In the Court of J.K. Sharma,  
Sessions Judge,  
Kangra at Dharamshala.  
Distt. Kangra (HP).**

CNR No. : HPKA01-000165-2018  
Computer registration No. : Crl. Rev./01/2018  
Crl. Revision No. : 6-D/X/2018  
Date of Presentation : 11-01-2018  
Date of Decision : 16-08-2019

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Veena Devi W/o Dass Ram, R/o VPO Dari, Teh. Dharamshala,  
Distt. Kangra(HP).

....Revisionist.

-Versus-

1. The State of H.P.
2. Dharmender Kumar S/o Sh. Gulab Ram R/o Quarter  
No. 26, Police Colony, Dharamshala, Distt. Kangra  
(HP).

.....Respondents.

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**Criminal Revision U/s 397 Cr.P.C. against  
the order dated 27-04-2017 passed by Sub  
Divisional Magistrate, Dharamshala, Distt.  
Kangra (HP).**

For the Revisionist : Sh. R.S. Rana, Adv.  
For the respondent No.1. : Sh. Rajesh Verma, Id. PP  
For the respondent No.2 : Sh. Rohit Sharma, Adv.

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**ORDER**

The present order shall dispose off this revision petition, which is filed against order dated 27-04-2017, passed by SDM, Dharamshala, Distt. Kangra (HP), in case/Kalandra U/s 145 Cr.P.C. bearing No. 45/2015, titled as Police Station, Dharamshala-Vs- Veena & Ors.

2. As per prosecution story, a Kalandra U/s 145 Cr.P.C. has been received from Police Station, Dharamshala,

Distt. Kangra (HP), wherein it was alleged that the revisionist lodged a complaint against respondent No.2, by alleging that the government had given the land on lease, but, the respondent No.2, threatened her to evict from the said land. The respondent No.2 invariably threatened and used filthy language against the revisionist. It was also averred that since the respondent No.2, was serving in the police department, the police had always taken his side. Hence, the present Kalandra.

3. After hearing the matter, it has been held by the Id. trial court that the respondent No.2, is the rightful owner of the disputed premises, as the revisionist could not prove that she is having any legal right, title or interest on the property. Hence, direction was hereby issued to the revisionist to vacate the disputed premises and hand over the same to respondent No.2. Hence this petition.

4. I have heard both the parties and gone through the record carefully. Arguments advanced in this appeal give rise to the following points for determination:-

(1) Whether the impugned order dated 27-04-2017, passed by SDM, Dharamshala, Distt. Kangra (HP), in case/Kalandra U/s 145 Cr.P.C. bearing No. 45/2014, titled as Police Station, Dharamshala-Vs- Veena & Ors., is sustainable under law.

(2) Final Order.

5. For the reasons to be recorded hereinafter, while discussing the aforesaid points, my findings on the same are as under:-

|                  |                                                       |
|------------------|-------------------------------------------------------|
| Point No.1.....  | No.                                                   |
| Final Order..... | Appeal allowed as per operative part of the judgment. |

### **REASONS FOR FINDINGS.**

#### **Point No.1 :**

6. The Id. counsel for the revisionist has argued that the order has been wrongly passed by the Id. trial court, in as much as the predecessor of revisionist has applied for the grant of land and it was granted in the year 1984, whereas he respondent No.2, has no right over the suit land, where the house was constructed. It is argued that the Id. trial court has wrongly directed the possession to be given to the respondent No.2. It is argued that now the respondent No.2, is threatening to disposes the revisionist.

7. The Id. counsel for the respondent No.2 has argued that the Id. trial court has found the respondent No.2 to be entitled to possession, therefore, the Id. trial court has rightly directed the possession to be handed over to the respondent No.2.

8. I have heard the Id. counsel for the parties and have gone through the record of the case carefully.

9. The perusal of the record of the Id. trial court shows that the revisionist had initially filed an application before S.P. Dharamshala, against the respondent No.2, alleging that the respondent No.2, used to tress-pass into her house and beat her. It was alleged that the suit land was granted to the revisionist, who was daughter of one Dass Ram, who has applied for the suit land on Patta, in which the respondent No.2, used to interfere. It appears that on this application the police conducted inquiry, by recording the statements of witnesses and sought permission of SDM, Kangra at Dharamshala, for preparing the case U/s 145 of Cr.P.C. and accordingly, the proceedings U/s 145 of Cr.P.C. was instituted before the court of SDM, Dharamshala. The Id. SDM, Dharamshala, had conducted the proceedings and after finding sufficient material on record, directed as per order dated 27-04-2017, to hand over the possession of the house to the respondent No.2.

10. The Id. counsel for the revisionist has argued that the Id. trial court has no power to direct, to hand over the possession to respondent No.2, when he was not entitled to the same. On the other hand the Id. Counsel for the respondent No.2, has argued as per the evidence led before the trial court the respondent No. 2, was shown to be in possession prior he was dispossessed, therefore, he was rightly held entitled to possession.

11. The perusal of the record of the Id. Trial court shows that it has been found by the Id. Trial court that in December, 2014, when the respondent No.2, and his family away and the house was locked, when the revisionist took possession of the disputed house, therefore, the respondent No.2 was entitled to possession. The perusal of the record, however, reveals that the Id. Trial court had gone wrong in directing the revisionist to hand over the possession of the disputed house to the respondent No.2. The Id. Trial court was not competent to restore the possession under the Proviso to sub-section (4) of sec. 145 Cr.P.C, wherein the Proviso provides as under:-

“ (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 tem, take such further evidence, if any as he thinks necessary, and, if possible, decide whether 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).”

12. There is no finding of the Id. Trial court that the respondent No.2, had been wrongfully dispossessed by the revisionist, within two months, next before the date on which the report of the police officer was filed before the Id. Trial court, so that that the Id. Trial court could have power under sec. 145 (6)(a) Cr.P.C., ordering the restoration of possession to the respondent No.2. As per the record the alleged dispossessed is of a December, 2014, and the information regarding the alleged dispossession has been laid before the Id. SDM, Dharamshala, on 24-04-2014. Thus, it can not be said that the Id. Trial court had powers under sec. 145 of Cr.P.C. ordering the restoration of the possession in the manner, as directed by the Id. Trial court. Because, requirement of Proviso to sub-section (4) of Section 145 Cr.P.C. is not met in this case. Therefore, the Id. Trial court had no power under sec. 145(6) (a) Cr.P.C. to order restoring the possession to the respondent no.2, who alleged forcible dispossession by the revisionist. Therefore, in such a case, where it was disputed fact and not covered under Proviso to Section 145 (4) Cr.P.C., then the Id. Trial court had no power for restoring possession and it could have referred the parties to the Civil Court, instead of itself grating the possession of the disputed land.

13. In view of the above discussion, it appears that the Id. trial court has exceeded its powers in ordering the handing over the possession by the revisionist. Therefore, this order passed by the Id. trial court is not sustainable in the eyes of law. Hence, point No.1, is answered in negative and in favour of the revisionist.

**Final Order.**

14. For the reasons recorded here-in-above, while discussing the Point No.1, the present revision petition is

allowed and impugned order passed by Id. SDM, Dharamshala, Distt. Kangra (HP), in case/Kalandra U/s 145 Cr.P.C. bearing No. 45/2015, titled as Police Station, Dharamshala-Vs- Veena & Ors. is hereby set aside and the aforesaid case is remitted back, with the direction to dispose of the case in the light of the observations made here-in-above and in accordance with law. The Id. trial court shall summon the parties accordingly. After the needful, file of this Court be consigned to the record room, whereas the record of the Id. SDM, Dharamshala, Distt. Kangra (HP), be sent back alongwith the copy of this order

**Announced and signed in the open Court today i.e. 16<sup>th</sup> August, 2019.**

**(J.K. Sharma)**  
Sessions Judge,  
Kangra at Dharamshala.  
Distt. Kangra (H.P).

B.S.