

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Miscellaneous No. 3985-M of 2014
(*Ejaz A. Mumtaz v. Shahzad Ahmed Mumtaz, etc.*)
&

Criminal Miscellaneous No. 767-M of 2015
(*Omar Farooq Sheikh v. Ijaz A. Mumtaz, etc.*)

JUDGMENT

| | |
|------------------|--|
| Date of hearing: | <u>14.10.2025</u> |
| Petitioner by: | M/s. Munir Ahmed Bhatti, Imran Humayun Cheema, Kh. Waseem Abbas and Mr. Muhammad Javed Arshad, Advocates |
| The State by: | Mr. Moeen Ali, DPG |
| Respondents by: | M/s. Saqib Saleem and Nazim Ali Chand, Advocates |

MUHAMMAD JAWAD ZAFAR, J.:- This judgment shall dispose of captioned criminal miscellaneous petitions “*Ejaz A. Mumtaz v. Shahzad Ahmed Mumtaz, etc.*” bearing **Crl.Misc.No. 3985-M of 2014** along with connected petition titled “*Omar Farooq Sheikh v. Ijaz A. Mumtaz, etc.*” bearing **Crl.Misc.No.767-M of 2015**, being interconnected in their subject, having a common question of law and fact. Through these petitions, the petitioners have impugned the order dated 12.06.2014 passed by the learned Additional Sessions Judge, Lahore (“**Court of Sessions**” or “**revisional court**”), and order dated 25.05.2010 passed by the learned Judicial Magistrate, Model Town, Lahore (“**Magistrate**”).

2. The relevant facts and circumstances, already prolix, are detailed herein for the disposal of these petitions, shorn of unnecessary details of course. The genesis of the controversy stems from proceedings under Section 145 of the Code regarding property belonging to the Lahore Chemical and Pharmaceutical Works (Private) Limited, situated at Plot No.108-B, Industrial Area, Kotlakhpur, Lahore (“**property**”), which was originally attached and sealed on receipt of complaint by Police Station Green Town, Lahore

(“**Police Station**”) in terms of Section 145 of the Code *vide* order dated 23.12.2005 and *rapt* bearing No.49 dated 24.12.2005 was incorporated by the Station House Officer (“**SHO**”) of the Police Station in this regard. Subsequent to the order of attachment/sealing, an application for de-sealing the property was submitted before the learned Magistrate on 19.03.2007, and a report from the quarters concerned, i.e. SHO Police Station, was sought. Detailed report was submitted on 14.04.2008, wherein it was stated that though guards are placed outside and around the factory/property, yet the same has been vacant since long, and there was no likelihood of any breach of peace. Based on the report, the property was de-sealed by the learned Magistrate *vide* order dated 18.04.2008. Order dated 18.04.2008 passed by the learned Magistrate was assailed before the learned Court of Sessions by invoking its Revisional jurisdiction and was set aside *vide* order dated 05.11.2008, primarily based on the principle of natural justice and the *lis* was remanded back to the learned Magistrate to decide the same after giving any and all necessary parties a fair opportunity of hearing. The order passed in revision was assailed before this Court in petition “Ejaz A. Mumtaz v. SHO etc.” bearing Crl.Misc.No.2190-M of 2008, but this Court dismissed Crl.Misc.No.2190-M of 2008, *vide* order dated 10.07.2009. Feeling aggrieved, jurisdiction of the honourable Supreme Court of Pakistan in terms of Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 (“**Constitution**”) was invoked for setting aside the order of the learned Court of Sessions and the order passed by this Court in “Ijaz A. Mumtaz v. The SHO, Police Station, Green Town, Lahore, etc.” bearing Criminal Petition for Leave to Appeal No. 822-L of 2009, however, the petition for leave to appeal was withdrawn simpliciter on 25.09.2009 in order to agitate the plea raised therein before the learned Magistrate in the remand proceedings.

3. Based thereon, the learned Magistrate, in the remand proceedings, directed the quarters concerned to keep the property

sealed *vide* order dated 20.10.2009 and summoned the respective parties. Imperatively, in the interregnum of the criminal proceedings, the learned Civil Court, Lahore, was approached and *vide ex parte* judgement dated 04.03.2008, whereby suit titled "Lahore Chemicals and Pahracuticals Works (Pvt.) Ltd. v. Shahzad Ahmed Mumtaz" bearing Civil Suit No.551/1/05 instituted on 28.11.2005 was decided and decree of permanent injunction *qua* the property was granted to the plaintiff of the said suit. This *ex parte* judgement was impugned through application under Rule 13 of Order IX of the Code of Civil Procedure 1908 ("CPC"), but the application was dismissed by the learned Civil Court *vide* order dated 09.01.2010. Regardless of the above, the learned Magistrate agreed with order dated 12.12.2005 and disposed of the application for de-sealing the property in question *vide* order dated 25.05.2010. The said order passed by the learned Magistrate was assailed before the learned Court of Sessions in criminal revision titled "Ejaz A. Mumtaz v. Shahzad Ahmed Mumtaz and another" bearing Criminal Revision No.95 of 2012. The learned revisional court did not find any material illegality or irregularity in order dated 25.05.2010 passed by the learned Magistrate so as to set the same aside in its Revisional jurisdiction. As such, the revision petition was dismissed *vide* order dated 12.06.2014. The order passed by the learned Court of Sessions and order dated 25.05.2010 passed by the learned Magistrate have been impugned herein.

4. Before delving further, it is of paramount importance to refer to the fact that various miscellaneous applications have been filed in the main petition for placing on record additional documents. In the documents appended with the said applications, it is deducible that a suit for declaration, cancellation of document and permanent injunction along with consequential relief was filed before the learned Civil Court, Lahore. Further, various civil original as well as contempt petitions pertaining to the rights in the company and

ownership of the property, from time to time, have also been annexed therewith the applications for additional documents.

5. Insofar as the petition titled “*Omar Farooq Sheikh v. Ijaz A. Mumtaz etc*” bearing Crl.Misc.No.767-M of 2015 is concerned, it is noted that the same orders have been impugned and possession of the same property has been sought in this petition as well.

6. Arguments of the learned counsel for the petitioners, learned counsel for the respondents and the learned DPG were heard, and the material available on record was perused with their able assistance.

7. The provision of Section 145 of the Code is only designed to meet an emergency situation causing a threat to the peace.¹ Purpose behind the proceedings under this provision is to prevent breach of peace and to ward off endangering disruptions, and maintain peace and tranquility while further maintaining status quo until the controversy is decided by the Civil Court concerned pertaining to the title or claim of property in dispute. For this section to become applicable, there should be a dispute likely to cause breach of peace² and where the Magistrate is satisfied that a dispute exists which is likely to cause breach of peace, a preliminary order, to meet the emergency as a stopgap arrangement,³ can be passed in terms of subsection (1) of Section 145 of the Code and thereafter the Magistrate can proceed if emergent situation causing threats to peace exist⁴ while at the same time, diffusing the situation, thereby enabling the parties to the dispute to set their controversy at naught through the Civil Court.⁵ The attachment/sealing order of the property is a preliminary/interim measure intended to save the parties from breach of peace but the same can only be passed if it cannot be determined as to which of them is entitled to its

¹ See “*Huseinali J. Merchant v. The State*” (2003 YLR 1742 Karachi).

² See “*Khan Muhammad v. Civil Judge and Judicial Magistrate-II, Tando Muhammad Khan*” (2013 PCr.LJ 1365 Sindh).

³ See “*Afzaal Mehdi v. Habib*” (1991 MLD 1177 Supreme Court (AJ&K)).

⁴ See “*Mohammad Zulfigar v. Court of Assistant Commissioner*” (2017 PCr.LJ 299 Sindh).

⁵ See “*Ali Rahman v. Naik Amal Khan*” (PLD 2013 Peshawar 61 (dB)).

possession, but such an order cannot attain permanency⁶ and only where none of the parties are found to be in possession can a Magistrate proceed in terms of subsection (1) of Section 146 of the Code by attaching the property. In “Chaudhary Munir v. Mst. Surriya”,⁷ it was held that there must not only be a dispute, but it is essential that a dispute is likely to cause breach of peace, and where there is no immediate apprehension of breach of peace, this section is not attracted. In other words, unless there is imminent apprehension of breach of peace, this provision cannot be invoked, nor can the power/jurisdiction vested under, and by it, be exercised by the Magistrate.⁸ It is trite that the Magistrate has to satisfy himself that the dispute between the parties is likely to cause breach of peace and for such satisfaction, he has to record evidence of the parties and without referring to the merits or claims of the parties as to their right to possess, the Magistrate should hear the parties and proceed with the matter in accordance with law and while doing so, he should peruse the statements of the parties, provide them with an opportunity of hearing and receive any and all such evidence as might be produced by the said parties and take further evidence, if need be, and then decide the question of possession and treat the party so dispossessed to be in possession of the subject property.⁹ The question of possession is only to the limited extent of who was in possession on the date of order, irrespective of the question as to the rights of the parties or their title thereto in the property.¹⁰ Insofar as the question of entitlement to land is concerned, it has been held by the Supreme Court that such determination is not a consideration before a Magistrate under this provision and any question *qua* rights

⁶ See “Abdul Qadir v. Sher Muhammad” (**1998 PCr.LJ 240 Lahore**).

⁷ **PLD 2007 Supreme Court 189.**

⁸ See “Mukhtiar Ahmad v. Haji Muhammad Saleem” (**2013 SCMR 357**).

⁹ See “Khan Muhammad v. Civil Judge and Judicial Magistrate-II, Tando Muhammad Khan” (**2013 PCr.LJ 1365 Sindh**).

¹⁰ See “Hazrat Muhammad Khan v. Muhammad Zair Khan” (**PLJ 2000 Supreme Court 81**).

or title in the property are to be decided by the Civil Court¹¹ and any dispute pertaining to a property, which is not likely to lead to breach of peace is within the exclusive domain of the Civil Court,¹² therefore, does not warrant the invocation of the provision of Section 145 of the Code.¹³ Further, dispossession is alleged within two months prior to the initial order passed by the Magistrate, and the dispute is within the territorial jurisdiction of the Magistrate concerned¹⁴ for the said Magistrate to assume jurisdiction under this provision. In “*Iqbal Shafiq v. Additional Sessions Judge, Lahore*”,¹⁵ wherein both the parties had not only filed civil suits against each other, rather proceedings were also pending before the learned company judge, where question with regard to the number of shares was under adjudication, this Court held that proceedings under Section 145 of the Code were rightly dismissed. Relevant excerpt of the judgement *supra* is reproduced for reference, as under:

‘8. Now the question arises whether the learned courts below were justified in dismissing the Qalandra under section 145, Cr.P.C. Admittedly such proceedings are initiated only when there is immediate apprehension of breach of peace. In the instant case both the parties had not only filed civil suits against each other rather proceedings are also pending before the learned Company Judge of this Court, where question with regard to number of shares is under adjudication. So when there was no untoward incident between the parties for a considerable time, the learned Magistrate was well within his jurisdiction to dismiss the proceedings and learned revisional court also rightly upheld the order of the learned Magistrate.’

8. Needless to observe that according to Article 4 of the Constitution, every person is to be treated in accordance with the law. Likewise, each and every single person is guaranteed the right to life and liberty by Article 9 of the Constitution, which is inclusive of the

¹¹ See “*Saleem-ur-Rehman v. Faqir Hussain*” (2004 SCMR 667).

¹² See “*Iqbal Shafiq v. Additional Sessions Judge, Lahore*” (2011 PCr.LJ 1313 Lahore).

¹³ See “*Qazi Gran v. Muhammad Jan*” (PLD 1996 Supreme Court 541 = PLJ 1996 Supreme Court 1142).

¹⁴ See “*Mst. Nasim Akhtar v. The State*” (1996 PCr.LJ 560 Lahore).

¹⁵ 2011 PCr.LJ 1313 Lahore.

quality of life.¹⁶ This cardinal right, in turn, is inclusive of the right to livelihood,¹⁷ when Article 9 of the Constitution is read in conjunction with Article 18 of the Constitution. The latter Article of the Constitution grants every citizen of the Islamic Republic of Pakistan the freedom to enter into any lawful profession or occupation, with the caveat that the said freedom to business may only be barred by a reasonable restriction imposed by the law in the public interest. Paramount to observe that every person, and the term person is inclusive of companies, is given the constitutional guarantee to hold, acquire and/or dispose of their properties and said person shall not be deprived of their properties, save as in accordance with law, which right(s) are protected in terms of Articles 23 and 24 of the Constitution.¹⁸

9. In the present *lis*, the invocation of Section 145 of the Code by the learned Magistrate appears to be both legally and factually untenable. The proceedings under this provision, as expounded and explained hereinabove, are confined to scenarios requiring urgent action due to actual apprehension of breach of peace. Material available on record demonstrates that protracted civil litigation, *inter alia*, disputes concerning the title, as well as shareholding in the company, spanning over a decade, have already taken place, some of which may be pending before the courts of competent jurisdiction, which disputes are in addition to any proceedings before the courts of criminal jurisdiction. Furthermore, no cogent material was placed before the learned Magistrate to suggest that an imminent threat to peace existed at the time of passing of the impugned order dated 25.05.2010. Indeed, and it is a matter of record, the property had long remained sealed; civil suits and appellate proceedings were underway;

¹⁶ See “*Shehla Zia v. WAPDA*” (**PLD 1994 Supreme Court 693**).

¹⁷ Wisdom is drawn from the case of “*Ghulam Sarwar Chang v. Province of Sindh*” (**2025 PLC (C.S.) 12 Sindh (dB)**); and, “*Muhammad Maqsood Aslam v. Province of Punjab*” (**2024 PLC (C.S.) 116 Lahore**).

¹⁸ See “*Multan Electric Power Company Ltd. v. Muhammad Ashiq*” (**PLD 2006 Supreme Court 328**); “*Mst. Safia Bibi v. Mst. Aisha Bibi*” (**1982 SCMR 494**); and, “*Sheikh Kamran Shafi v. Sadagat Shafi*” (**2025 CLD 1165 Lahore**).

and no new act of aggression, dispossession, or confrontation is shown to have occurred around the time in question. The prolonged pendency of litigation, in and by itself, reflects cooling of tempers, as opposed to any escalation. Since jurisdiction under Section 145 of the Code is conditional upon a present and credible apprehension of disorder of peace and tranquillity, due to the absence of such *prerequisite*, the continuation of sealing the property becomes *ultra vires*. It is axiomatic that neither a dispute over the title of the property nor any historical issues *qua* the possession of the property warrant preventative action of sealing the property under Section 145 of the Code where peace is not imperilled. Hence, the order of the learned Magistrate, as sustained by the learned Revisional court, falls foul of the settled principles of law and is inconsistent with the constitutional guarantees, some of which have already been highlighted hereinabove.

10. The upshot of the deliberation made hereinabove is that the impugned order dated 12.06.2014 passed by the learned Additional Sessions Judge, Lahore and impugned order dated 25.05.2010 passed by the learned Judicial Magistrate, Model Town, Lahore are fraught with serious infirmities and flaws, as the learned Magistrate had failed to satisfy himself regarding the preconditions of any imminent breach of peace, which the learned Revisional court, in turn, neglected to examine the legality and jurisdictional propriety of the preventative proceedings in the factual context of prolonged civil litigation, therefore, it can safely be concluded that both the said courts have acted on impulse, based on misinterpretation and misapplication of law, instead of proceeding in accordance with safe principles of administration of justice; as such, the impugned orders passed by them cannot be sustained.

11. Consequently, these petitions are **accepted**; the impugned order dated 12.06.2014 passed by the learned Additional Sessions Judge, Court of Sessions, Lahore and impugned order dated 25.05.2010

passed by the learned Judicial Magistrate, Model Town, Lahore are **set-aside**; the property is directed to be de-sealed forthwith; and, possession thereof is **restored** in favour of Lahore Chemical and Pharmaceutical Works (Pvt.) Ltd. SP (Operations) concerned is directed to hand over the possession of the property to a person who is duly authorize to take control/possession of the property by the Board of Directors of the company i.e. Lahore Chemical and Pharmaceutical Works (Pvt.) Ltd. through a resolution.

(MUHAMMAD JAWAD ZAFAR)
JUDGE

Approved for reporting.

Judge

Ejaz/*