



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.465 of 2024
Date of Decision: 05.05.2026

Pramod Kumar and Another**Petitioners**
Hir Chand and Another**Respondents**

Coram
Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioners: Mr. Kul Bhushan Khajuria, Advocate.
For the Respondents: Mr. Aashish Kumar, Advocate, for respondent No.1.
Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for respondent No.2/State.

Sandeep Sharma, J. (Oral)

Being aggrieved and dissatisfied with the order dated 26.06.2023 passed by the Sub-Divisional Magistrate, Kalpa at Reckong Peo, District Kinnaur, in case No.22/iv/2023, titled as *Sh. Hir Chand Vs. Sh. Pramod Kumar and Another*, whereby afore authority, while allowing the complaint filed by respondent No.1 under Section 147 of the Code of Criminal Procedure (for short, ‘**Cr.P.C.**’) directed petitioners herein to remove the obstruction caused by them on the path in dispute, petitioners have approached this Court praying therein to set aside aforesaid order.

2. It is pertinent to take note of the fact that a specific objection was raised at the behest of learned counsel representing the respondent No.1 that present petition is not maintainable as the order is revisable, and Coordinate Bench of this Court vide order dated 11.01.2024, accepted the

objection raised by the afore respondent that the present petition is not maintainable under Section 482 Cr.P.C. in view of the availability of alternative remedies. Thereafter, Coordinate Bench of this Court vide order dated 22.07.2024 passed in Cr.MP No.1275 of 2024, allowed the application filed by the petitioner and ordered conversion of present petition under Section 482 Cr.P.C. to Criminal Revision Petition.

3. Precisely, the facts of the case, as emerge from the pleadings adduced on record by the respective parties are that respondent No.1 (hereinafter referred to as '**complainant**') filed a complaint before the Police alleging therein that petitioners have blocked the path (*gair mumkin rasta*) comprising of Khasra No.720, situate in village Basteri, Tehsil Sangla, District Kinnaur. Taking cognizance of afore complaint, Station House Officer, Police Station Sangla, District Kinnaur, conducted investigation and found that in case path alleged to be obstructed by petitioners is not opened, there may be breach of peace in the area and accordingly presented *Kalandra* under Section 147(4) of Cr.P.C. in the Court of Sub-Divisional Magistrate, Kalpa at Reckong Peo, District Kinnaur, on 22.06.2023.

4. Immediately after receipt of afore *Kalandra*, Sub-Divisional Magistrate directed Tehsildar, Sangla, to give his report, who in his report dated 24.06.2023 though stated that path in dispute is in Khasra No.720, measuring 00-02-66 hectare, belonging to Mr. Basti Ram etc., but the same has been obstructed by Mr. Padam Singh son of Sh. Ajan Singh and Mr. Pramod Kumar son of Mr. Dharam Sukh, i.e. petitioners herein.

Tehsildar, Sangla, further clarified in his report that as per local customary law, no person can stop other person's path which leads to his fields. Besides above, Sub-Divisional Magistrate also ensured service of respondents i.e. petitioners herein and on 26.06.2023, recorded the statements of complainant as well as respondents, i.e. petitioners herein, and thereafter passed impugned order dated 26.06.2023 (Annexure P-1), thereby directing the petitioners herein to remove the obstruction on the path in dispute before 10:00 am on 27.06.2023, failing which Tehsildar, Sangla, was ordered to remove the same with the help of SDO, PWD, Sangla, in Police presence. In the afore background, petitioners have approached this Court in the instant proceedings praying therein to set aside afore order.

5. Precisely, the grouse of the petitioners, as has been highlighted in the petition and further canvassed by Mr. Kul Bhushan Khajuria, learned counsel representing the petitioners, is that no opportunity of being heard was ever afforded to the petitioners by Sub-Divisional Magistrate before passing the impugned order. He further submitted that once it stood established on record that Khasra Nos.719 and 720 are owned and possessed by petitioners, there was no occasion, if any, for the authority concerned to eject them from their own land. Mr. Khajuria further submitted that question of title can only be adjudicated by the Civil Court and Sub-Divisional Magistrate has no authority to decide the question of title, hence, he could not direct the Police to forcefully evict the petitioners, who are co-owners of the land in dispute. Mr. Khajuria further

submitted that Sub-Divisional Magistrate, while passing impugned order, has travelled beyond his jurisdiction and exercised the jurisdiction which was not vested with him, hence, the same is liable to be quashed and set aside. He further submitted that no cogent and convincing evidence ever came to be adduced on record by the respondents to substantiate their plea that land in dispute was being used by them as well as other villagers from the times immemorial, hence, impugned order, which has otherwise been passed in hot-haste manner, deserves to be quashed and set aside. Mr. Khajuria further argued that petitioners had filed civil suit before the learned Civil Court, wherein restraint order has been passed qua the suit land comprised in Khasra No.720, hence, Sub-Divisional Magistrate otherwise could not sit over the judgment passed by the learned Civil Court, which has otherwise jurisdiction to decide the issue of title.

6. To the contrary, Mr. Aashish Kumar, learned counsel representing the respondent No.1 and Mr. Rajan Kahol, learned Additional Advocate General, supported the impugned order. They submitted that bare perusal of impugned order nowhere suggests that due opportunity of hearing was not afforded to the petitioners. They further submitted that report of Tehsildar submitted to the Sub-Divisional Magistrate clearly reveals that though petitioners herein are the owners of land in question, but same was being used by respondents as well as other villagers for going to their fields from times immemorial and hence, no illegality can be said to have been committed by the Sub-Divisional Magistrate while passing the order of removal of obstruction.

7. I have heard the parties and gone through the record of the case.

8. Careful perusal of material adduced on record clearly reveals that land comprised in Khasra No.720, qua which impugned order came to be passed by the competent authority, is a private land, belonging to Mr. Basti Ram etc. and petitioners herein Pramod Kumar and Padam Singh are the co-owners in the same. If the original complaint filed by the complainant to the Police is perused (Annexure P-2 Colly), it clearly reveals that it is none of the case of the respondents that land comprised in Khasra No.720 belongs to him, rather his precise case, as came to be put forth is, that he as well as other villagers had been using the land comprised in Khasra No.720 for last so many years. As per complainant, path comprised in Khasra No.720 has been used by their ancestors and other villagers for past 70-80 years to go to their houses and fields. He also claimed that same path is used by local *Devta* and villagers to go to the Panchayat crematorium since times immemorial. Aforesaid version put forth by the complainant further came to be substantiated with the statements of Up-Pradhan, Patwari and other villagers, as recorded in the *Kalandra* submitted by the Police authorities to the Sub-Divisional Magistrate.

9. Impugned order dated 26.06.2023 further reveals that afore authority also recorded the statement of complainant as well as petitioners, wherein complainant reiterated that land/path comprised in Khasra No.720 is being used by villagers for going to their houses as well as fields

since times immemorial. Tehsildar, Sangla, after visiting the spot, submitted report on 24.06.2023, stating therein that path in dispute is in Khasra No.720, measuring 00-02-66 hectare, belonging to Mr. Basti Ram, but same has been obstructed by Mr. Padam Singh and Mr. Pramod Kumar, petitioners herein. Tehsildar, Sangla, further clarified that as per local customary laws, which has the force of law, no person can stop other persons' path which leads to their fields. His aforesaid observation in the report dated 24.06.2023 is based upon *Wajib-Ul-Arz*, wherein it has specifically provided that path leading to fields cannot be obstructed/stopped.

10. Since complainant was able to substantiate his claim with regard to use of passage for so many years by getting the statements of Up-Pradhan and Patwari of the area concerned recorded, coupled with the report submitted by the Tehsildar, Sangla, dated 24.06.2023, no illegality otherwise can be said to have been committed by the Sub-Divisional Magistrate while passing impugned order, thereby directing the respondents to remove the obstructions.

11. Section 147 Cr.P.C. empowers Executive Magistrate to pass preventive/restraint order, in case he or she is satisfied from the report of Police officer that a dispute likely to cause breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, however, before passing afore order, he or she is required to afford opportunity of being heard to all the affected parties, which in the case at

hand has been duly afforded to complainant as well as petitioners. Though Mr. Kul Bhushan Khajuria, learned counsel representing the petitioner, attempted to argue that no opportunity of being heard was ever afforded to the petitioners, but having perused impugned order, this Court finds that authority concerned before passing the same issued notice to the complainant as well as respondents and thereafter also recorded their statements. Besides above, afore authority also took into consideration the report submitted by the Tehsildar, Sangla, as well as statements made by local villagers as well as *Patwari* of the area concerned to the Police, which ultimately came to be placed before the authority concerned along with the *Kalandra* filed under Section 147 Cr.P.C.

12. While exercising power Section 147 Cr.P.C., Executive Magistrate after being satisfied from the report of the Police officer or upon other information that dispute, likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, may summon the parties and record their statements. If after having perused statements as well as other material adduced on record by the respective parties, authority concerned thinks necessary and, if possible, decides that whether such right exists, he can make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right. Aforesaid exercise of power is subject to proviso that no such order shall be made, where the right is exercisable at all times of the year, unless such right has been exercised within three months before the

receipt of report of a Police Officer under Sub-Section (1) or other information leading to the institution of the inquiry, or where the right is exercisable only at particular season or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt. However, in the instant case, precise case of the complainant, which subsequently came to be substantiated by the villagers and revenue officials, that path comprised in Khasra No.720 is being used by them as well as their ancestors for so many years, hence, restriction put through aforesaid proviso could not be a bar for authority concerned in the case at hand to pass prohibitory order.

13. Though Mr. Khajuria, learned counsel representing the petitioners, while referring to the order dated 08.10.2020 passed by the learned Senior Civil Judge, Kinnaur at Reckong Peo, District Kinnaur, Himachal Pradesh (available at page No.24 of the paper-book), attempted to argue that since there was a restraint order passed by the Civil Court qua the use of land comprised in Khasra No.720, there was no occasion, if any, for Sub-Divisional Magistrate to pass the impugned order, however, having carefully perused aforesaid order, this Court is not impressed with the submission of Mr. Khajuria. Bare perusal of aforesaid order reveals that dispute in afore case was *inter se* co-owners. Applicant Pyare Lal, claiming himself to be owner in possession of the suit land, submitted that respondents are trying to create new path, either from the path in suit land comprised in Khasra No.719 or Khasra No.720, co-owned by the applicant, despite the fact that they are stranger to the suit land and have access to

their land and property through Khasra Nos.714, 757 and 758 of village Basteri. Applicant also submitted that respondents are hell-bent to create new path with a view to have shortcut path to their land and property by interfering in the suit land co-owned by the applicant i.e. Pyare Lal. It is pertinent to take note of the fact that in afore case, persons namely Balbir Singh, Sindra and Ramesh Kumar, co-owners, were respondents, whereas present petitioners, who claimed themselves to be the co-owners in the suit land comprised in Khasra No.720, were not party. Learned Civil Court, having found merit in the claim of applicant Pyare Lal, made injunctive order dated 16.09.2020 absolute and restrained respondents, namely Balbir Singh, Sindra and Ramesh Kumar, from causing any kind of interference in and over the suit land in any manner whatsoever, till final disposal of the suit land. However, in the instant case, neither parties are same, nor injunction has been granted against complainant and other villagers, rather persons namely Balbir Singh, Sindra and Ramesh Kumar have been enjoined from interfering in the suit land, which is claimed to be in possession of Mr. Pyare Lal, rather, after having carefully perused aforesaid judgment, this Court finds that suit land comprising of Khasra Nos.719 and 720 is owned and possessed by various co-owners, and petitioners herein are also co-owners in Khasra No.720.

14. Complainant specifically alleged that aforesaid persons, who were co-owners among other various land owners, have obstructed their path comprised in Khasra No.720 and learned Sub-Divisional Magistrate having taken note of report submitted by the Tehsildar, Sangla, directed

the petitioners to remove the obstruction, erected by them in the path in dispute, but he nowhere decided the question of title, which admittedly can be decided by the Civil Court and not by Sub-Divisional Magistrate. Learned Civil Court vide order dated 08.10.2020, placed on record, has nowhere decided the question of title *inter se* parties, rather dispute in that case was only *inter se* two co-owners. Orders passed by Sub-Divisional Magistrate shall remain in force till the time same is not interfered by the superior Court of law or declaration is given by the competent Court of law that land comprised in Khasra No.720 is owned and possessed exclusively by the petitioners, and respondents and other villagers have no right to use the same. However, till the time afore declaration, if any, comes, petitioners herein, who otherwise during proceedings pending before the Sub-Divisional Magistrate agreed to permit the private respondents to use the path on temporary basis, cannot cause obstruction or raise objection qua the use of the same by the complainant and other villagers, especially in view of report submitted by Tehsildar, Sangla.

15. Consequently, in view of the above, this Court finds no illegality or infirmity in the impugned order, as such, present petition fails and is dismissed accordingly. Pending applications, if any, also stand disposed of.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.

(Sandeep Sharma)
Judge

May 05, 2026
Rajeev Raturi