



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Rev.P. 16/2022

1:Gyamar Takar @ Bharat
S/o Lt. Gyamar Tajik,
Resident of Yupia I, PO/PS Doimukh, District Papum Pare, Arunachal Pradesh,
Mobile No 9774872420

VERSUS

1:THE STATE OF AP and 2 Ors.
Represented by the Public Prosecutor

2:Gollo Teli
Son of Shri Gollo Tagum

Resident of Village
PO and PS Doimukh
Papum Pare District
Arunachal Pradesh.

3:Tana Tiyo Gollo
Wife of Gollo Teli

Resident of Village Yupia III
PO and PS Doimukh
Papum Pare District
Arunachal Pradesh

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the appellant : Mr. C. Modi, Advocate.

For the Respondents : Ms. L. Hage, Addl. PP.
Mr. R. Nabam, Advocate.

Date of Hearing : 29.06.2023

Date of Judgement : 29.06.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. C. Modi, learned counsel for the petitioner. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh and Mr. R. Nabam, learned counsel for the respondent Nos. 2 ad 3.
2. The present criminal revision petition is filed under Section 397/398 of the Criminal Procedure Code assailing an order dated 19.09.2022 passed by the Sub Divisional Officer, Papum Pare District, Doimukh in exercise of power under Section 145 of Cr.P.C.
3. By the aforesaid order, the petitioner was prohibited to do any activities over the disputed plot of land at Yupia-II village (near Highway) till the case is solved amicably through a civil Court.
4. This Court also called for the scanned copies of the case record which has been received and perused.
5. The record reveals that the respondent Nos. 2 and 3 filed a complaint before the Sub Divisional Officer cum Executive Magistrate, Doimukh on 19.09.2022 seeking for promulgation of order under Section 145 of Cr.P.C. and to pass status quo order until further orders.

6. On perusal of the said complaint, it is revealed that the respondent Nos. 2 and 3 alleges that a plot of commercial land measuring East 25 Mtr, West 38 Mtr, South 37 Mtr, North 32 Mtrs, measuring 1058.85 Sq Mtrs, located at Yupia-II was purchased on 28.10.2011 from one Shri Riya Takar for valuable consideration. The land of the petitioner, according to the respondent Nos. 2 and 3 is located in the East side of the aforesaid land and he has forcefully encroached the Highway Side land in the North side and thereby obstructed the commercial area of the respondent Nos. 2 and 3.
7. Though requests were made by the respondent Nos. 2 and 3 to the present petitioner not to encroach the land, he ignored such request and thereafter on 20.03.2020, intervention of the village Gaonburah was sought, for an amicable settlement. Though such amicable settlement was tried, however, the petitioner herein did not listen to the advice of well wisher and on 17.09.2020, has illegally/forcefully constructed a Pan shop within the land belonging to the respondent Nos. 2 and 3.
8. Though again a request was made not to encroach, however, the petitioner herein threatened to kill them and also abused/insulted them in front of public. Accordingly, in the aforesaid backdrop, the application was filed.
9. The record reveals that on 19.09.2022, the impugned order was passed. No other materials are available on the record of the proceeding of the learned Executive Magistrate except the order and the complaint filed by the respondent Nos. 2 and 3 along with annexures.
10. In the aforesaid backdrop, the present petition is filed on the ground that the condition precedent for passing an order under Section 145 Cr.P.C. was not available inasmuch as no material was available to have satisfaction to

pass such an order including police report.

11. Accordingly, Mr. Modi, learned counsel for the petitioner submits that such order is liable to set aside and quashed. It is the further case of Mr. Modi, learned counsel that the dispute is civil in nature and therefore, it should be determined in the Civil Court and the aggrieved party should approach Civil Court.
12. Countering such argument, Mr. R. Nabam, learned counsel for the respondent Nos. 2 ad 3 submits that from the application filed by them, it is discernable that there was an apprehension of breach of peace and tranquillity and therefore, without even report, the Magistrate was within its power to pass the aforesaid order. Therefore, the impugned order is not liable to interfered with in exercise of power under Section 398 of the Criminal Procedure Code.
13. This Court has given anxious consideration to the argument advanced by the learned counsel for the parties and also perused the record.
14. On bare perusal of the Section 145 (1) of the Cr.P.C. reveals that a Magistrate who passes an order under the aforesaid Section must have satisfaction that there is a conflict/dispute over an immovable property and such dispute is likely to result in a breach of peace before initiation of any legal proceeding. The said provision is also clear that before passing a preliminary order under Sub Section 1 of Section 145 of the Cr.P.C. a Magistrate must have a satisfaction from a report of the police officer or other information that a dispute is likely to cause a breach of the peace concerning any land etc.
15. In the case in hand, if we go through the record, neither any police report was called for nor there was any police report from the concerned police station that there is any likelihood of any breach of peace on account of the

land dispute in question.

16. The material available before the Magistrate was only the application filed by the respondents. The statement made in application filed before the Magistrate clearly reveals that the dispute is purely civil in nature. Though an allegation was made that the petitioner herein threatened to kill them and abused them, such statement shall not automatically be treated as a satisfaction that there is likelihood of breach of peace and tranquillity involving the aforesaid land to pass an order under Section 145 of the Cr.P.C. Therefore, in the considered opinion of this court, no material was available before the Magistrate while passing the impugned order and before exercise power under Section 145 (1) of the Cr.P.C. Further, the dispute is purely civil in nature, barring the allegation of threat of life and for such threat initiating a proceeding under Section 145 of the Cr.P.C. is not a remedy.
17. In the aforesaid view of the matter the present petition stands allowed by setting aside the impugned order dated 19.09.2022 passed by the Sub Divisional Officer, Papum Pare District, Doimukh. However, parting with the record, this court makes it clear that the respondent Nos. 2 and 3 if are having any grievance regarding encroachment of their land or title over the land, they shall be at liberty to initiate proper proceeding before the competent Civil Court or before the competent customary court and the order passed today shall not influence the decision of such authority.
18. With the aforesaid finding, the present revision petition stands allowed.

JUDGE

Comparing Assistant