

GAHC010029912022



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

Case No. : Crl.Pet./120/2022

NIRMALI SAIKIA AND 7 ORS.
W/O SRI JATIN SAIKIA
R/O TIPLING NOLONI
PATHAR GAON, P.S. DULIAJAN
DIST. DIBRUGARH, ASSAM

2: SMT. URBOSHI DOIMARI
W/O SRI MRIDUL DOIMARI
R/O TIPLING NOLONI
PATHAR GAON
P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM

3: SMT. MADHUSMITA DOIMARI
W/O LATE ANIL DOIMARI
R/O TIPLING NOLONI
PATHAR GAON
P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM

4: SMT. NIRARANI DOIMARI
W/O SRI TOPON DOIARI
R/O TIPLING NOLONI
PATHAR GAON
P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM

5: SMT. ANJALI DOIMARI
D/O LATE MURARI DOIMARI
R/O TIPLING NOLONI
PATHAR GAON

P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM

6: SMT. USHA DOIMARI
W/O SRI MONESWAR DOIMARI
R/O TIPLING NOLONI
PATHAR GAON
P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM

7: SRI MRIDUL DOIMARI @ SURESH DOIMARI
S/O LATE MUKUNDA DOIMARI
R/O TIPLING NOLONI
PATHAR GAON
P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM

8: SRI UPEN DOIMARI
S/O SRI MUNESWAR DOIMARI
R/O TIPLING NOLONI
PATHAR GAON
P.S. DULIAJAN
DIST. DIBRUGARH
ASSA

VERSUS

AJIT BARUAH
SON OF LATE PHONIDHAR BARUAH
BORAGDHOI GAON (TIPLING), P.S. DULIAJAN, DIST. DIBRUGARH, ASSAM

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : MR. D DAS SR. ADV

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioners : Mr. P. J. Saikia, Senior Advocate

For the Respondent : Mr. D. Das, Senior Advocate
Assisted by Mr. S. Khound, Advocate.

Date of Hearing : 22.11.2023

Date of Judgment : 29.11.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. P. J. Saikia, learned Senior Counsel for the petitioners. Also heard Mr. D. Das, learned Senior Counsel assisted by Mr. S. Khound, learned counsel for the respondent.
2. By way of this application filed under Section 482 of the Cr.P.C., the petitioners have challenged the order dated 11.01.2022, passed by the learned Sessions Judge, Dibrugarh, in Criminal Revision No. 31(2)/2016, affirming the order dated 26.04.2016, passed by the learned Additional District Magistrate, Dibrugarh, (in short as ADM) in Case No. 228/2015 and thereby dismissing the said petition.
3. The facts relevant for adjudication of the present petition are as under:-
 - I. The respondent herein lodged an F.I.R. on 07.07.2015 before the Officer-in-Charge, Duliajan PS inter alia alleging that on

07.07.2015, at around 05:00 PM, the accused named therein (petitioner herein) with a conspiracy to take forceful possession of the land under Dag No. 192 Patta No. 30 (AP) situated at Boragodhai Gaon, Duliajan, entered into the aforesaid land possessed by the informant and damaged the wall etc., and abused the informant and threatened him to kill. The aforesaid case was registered as Duliajan PS Case No. 285/2015 under Sections 143/120(3)/447/427/294/506 of IPC.

- II. Thereafter, the Sub Inspector of Police, Duliajan Police Station, registered a Non FIR case No. 14/2015 under Sections 107/145 Cr.P.C. and submitted a report before the Executive Magistrate, Dibrugarh. In the report, the respondent herein was arrayed as a 1st party and the petitioners as a 2nd party.
- III. The aforesaid report discloses lodging of the FIR dated 07.07.2015 and also discloses that there is apprehension of repeating the same action on the part of the accused named in the FIR and there is serious apprehension of breach of peace and tranquility. It was also reported that the informant is in the possession of the disputed land and there is emergent need for intervention inasmuch there may be serious breach of public peace and tranquility.
- IV. On the basis of the aforesaid report, the learned ADM, Dibrugarh, passed a preliminary order, which is quoted hereinbelow:-

“ORDER

Dated.10.07.2015

C/R received on transferred. Seen the Police report as well as

complaint petition.

On perusal of the record, I am satisfied that there is a dispute over a plot of land regarding position schedule of which is given below. Hence, I do hereby draw up proceeding U/S 145 Cr.P.C. asking both parties to put in W/S in support of their respective claims over the D/L.

In view of severe nature of the case and to maintain peace in the locality, I do hereby attach the D/L U/s 146 Cr.P.C., prohibiting both parties from entering into the D/L.

Officer-in-Charge, Duliajan Police Station is asked to carry out the above order and report compliance.

Additional District Magistrate

Dibrugarh.

Schedule of Dispute Land

Dag No. 292.

Patta No. 34.

Mauza. Tipling

Vill- Boragadhoi Gaon (Tipling)

Circle- Tengakgat Revenue Circle".

- V. Thereafter, both the parties had entered appearance in the proceeding before the learned ADM, Dibrugarh by filing written statements.
- VI. Thereafter, by final order dated 26.04.2016, the learned ADM, Dibrugarh declared that 1st party is in possession of the disputed land and entitled to retain possession until ousted by due course of law and also directed them to strictly forbid any disturbance of the

possession of the 1st party and the attachment order passed earlier was vacated.

- VII. Being aggrieved, the present petitioner's (2nd Party) approached before the learned Sessions Judge, Dibrugarh by preferring a Revision Petition under Section 397/399 of Cr.P.C., which was registered as CrI.Revn.No.31(2)/16. The case was transferred to the Court of learned Additional Sessions Judge, (FTC) Dibrugarh.
- VIII. The learned Additional Sessions Judge, (FTC), Dibrugarh, by its Judgment dated 20.06.2016, set aside the order dated 26.04.2016 passed by the learned ADM, Dibrugarh on the ground that aforesaid order was not passed as per the provision of Sub Section 6 of Section 354 of the Cr.P.C.
- IX. Being aggrieved, the 1st Party/respondent herein approached this Court by way of filing an application under Section 482 of the Cr.P.C., which was registered as CrI.Pet./515/2016.
- X. This Court under its order dated 17.05.2018, set aside the order of the learned Additional Sessions Judge, Dibrugarh, remanding the matter and to take a fresh decision on merit without being influenced by any observation made by this Court in the aforesaid order dated 17.05.2018.
- XI. Thereafter, the learned Sessions Judge, Dibrugarh, by its order dated 11.01.2022, after examining the matter on merit found that there is no infirmity in the final order dated 26.04.2016 passed by the learned ADM in Case No. 228/2015 and accordingly Criminal Revision Petition was found to be devoid of merit and the same was

dismissed.

XII. Being aggrieved, the present application is filed.

4. Mr. P. J. Saikia, learned Senior Counsel for the petitioners argues the following:-

I. that the learned Additional District Magistrate, Dibrugarh, has in fact, entered into question of title which is not permissible in exercise of jurisdiction under Section 145 of Cr.P.C. and the purpose of Section 145 of Cr.PC is to prevent breach of peace and to decide who was in possession on the date of preliminary order and to settle the matter temporarily by maintaining the status quo until the rights are determined by a competent Court. However, the learned Additional District Magistrate has done what is forbidden by law. In support of his contention, Mr. Saikia, learned Senior Counsel relies on the decision of this Court in the case of **Tirual Bortimon Tea Estate (P.) Ltd. And Anr –Vs- Tipeswar Gogoi and Ors** reported in **(2012) 3 GLR 616.**

II. The expression “breach of peace” does not really mean mental peace of parties concerned. Disturbance of public order is distinct from action of individual however, without entering into such aspect of the matter, the learned ADM has passed the impugned order and the learned Sessions Judge has committed an error upholding such perverse determination. In support of his contention, Mr. Saikia, learned Senior Counsel relies on a decision of this Court in the case of **Kaushal Mishra and Ors –Vs- Raj Kumar Mishra** reported in **2007 (4) GLT 889.**

III. The learned Magistrate without there being materials before him, to have satisfaction that there is likelihood of breach of peace and tranquility, issued the preliminary order inasmuch as from the police report though there is reflection of lodging of FIR on 07.07.2015, however, there is no mention of occurrence of any incident on 08.07.2015 on the basis of which the initial order was passed.

IV. The initial order, therefore, was passed without any materials before the learned Magistrate, to have a satisfaction as required to take cognizance under Section 145 of Cr.P.C. In support of such contention, Mr. Saikia, learned Senior Counsel relies on the decision of this Court in the case of **Manager, Bharat Refractories Ltd. –Vs- Dr. Sandar Son Dkhar** reported in **1990 2 GLR 29**.

V. Power under Sub Section 1 of Section 145 of Cr.P.C., cannot be exercised arbitrarily and when the condition precedent for passing such an order does not exist in a given case. The Magistrate must have a satisfaction that such dispute is likely to cause breach of peace inasmuch as private dispute is not amenable to the exercise of jurisdiction under Sub Section 1 of Section 145 of Cr.P.C. Therefore, in the aforesaid backdrop, the Magistrate could not have drawn a proceeding under Section 145 (1) Cr.P.C. and the same being bad in law, the all subsequent proceedings are liable to fall. In support of such contention, Mr. Saikia, learned Senior Counsel relies on the decision of this Court in the case of **Jesmin Rahman –Vs- Afruza Begum and Another** reported in **2008 1 GLR 577**.

5. Per contra Mr. D. Das, learned Senior Counsel for the respondent argues the following:-

- I. that the present application filed under Section 482 is nothing but a second revision petition in disguise and such 2nd revision application is not maintainable.
- II. The conclusion has been reached by the learned ADM on the basis of the evidence adduced by the 1st party and 2nd party. Such findings of fact has been reaffirmed by the revisional court after due appreciation and therefore, this Court in exercise of power under Section 482 of Cr.P.C. may not like to intervene not being hit by perversity or hit by any serious error of law. Accordingly, the present application is liable to be dismissed.
- III. The Magistrate, has not determined the title of the parties rather it has decided the factum of possession and relegated the parties to the appropriate forum. Therefore, if the revision petitioner claims any ownership or want to recover the possession, they can very well file a suit in this regard. In support of such contention, Mr. Das, learned Senior Counsel relies on the decision of the Hon'ble Apex Court rendered in the case of **Jhummamal Alias Devandas –Vs- State of Madhya Pradesh and Others** reported in **1988 4 SCC 452**.

6. Determination:-

- I. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the case record of the learned Court below.
- II. A second revision petition is not maintainable at the instance of the same petitioner in terms of the provision of Section 397(3) of

the Cr.P.C., merely for the reason that the petition is filed under Section 482 of Cr.P.C. The bar under Section 397 (3) of Cr.P.C. should not be brushed aside inasmuch as only when the laid down parameter for exercise of power under Section 482 of Cr.P.C. is made out, such second revision petition need to be examined.

- III. When it is second revision by the same parties and the 2nd petition is filed under Section 482 of Cr.P.C., the High Court in the considered opinion of this Court, is to exercise its power sparingly with great caution. The petitioner will have the right to be heard by the High Court to assail the same order which was subject matter of the revision before the Sessions Court, only when the High Court finds that there is an abuse of process of Court or that there was serious miscarriage of justice or that mandatory provisions of law were not complied with. Such power can also be exercised if there is apparent error on the face of the order of the first revisional Court.
- IV. In the case of **Manjuram Kalita –VS- State of Assam** reported in **2009 13 SCC 330**, the Hon'ble Apex Court, while dealing with the scope of re-appreciation of evidence by the higher Court in criminal revision observed that if the Courts below have recorded the findings of fact, the question of re-appreciation of evidence by the third court does not arise unless it is found to be perverse.
- V. A proceeding under Section 145 of Cr.P.C., is primarily concerned with the prevention of breach of peace by declaring the party found in possession to be entitled for remaining in possession until decided otherwise by a competent Court.

- VI. This Court after perusal of the record, including the evidence do not find any perversity in the finding of the learned ADM inasmuch as the condition precedent for exercise of such jurisdiction was present on the date of passing the preliminary order drawing the proceeding under Section 145 of Cr.P.C. inasmuch as the police department was very much clear that there was apprehension of serious breach of public peace and tranquility.
- VII. It is also well settled that the object of the revisional Court is to set right patent defect or an error of jurisdiction or of law and revisional Court in exercise of power under Section 482 of Cr.P.C. does not dwell at length upon the facts and evidence of the case to reverse those findings, more particularly when revisional power has already been exercised by a competent Court.
- VIII. After perusal of the record, it is found that neither the ADM nor the learned Sessions Judge has committed any patent illegality to warrant exercise of power of this Court under Section 482 of Cr.P.C. that too, when it is a second revision petition filed by the petitioner. Two competent Courts below have recorded a finding that the respondent was in possession of the premises on the basis of appreciation of evidence adduced by the parties. That being so, without any material to show any perversity in such factual determination in the present case, there is no scope for recording of the evidence.
- IX. The fact remains that the learned Magistrate, has passed the initial order under Section 145(1) Cr.P.C., on the basis of a police report and on being satisfied that there is likelihood of serious

breach of peace and tranquility. As discussed hereinabove, the police report also disclosed that there is serious likelihood of breach of public tranquility arising out of the dispute between the first party and the second party. Therefore, it cannot be said that there were no materials before the learned Magistrate to pass an order under Section 145(1) of the Cr.P.C.

- X. It is clear from the materials available on record that the parties had entered appearance before the learned ADM, filed their written statement, laid their evidence and on the basis of such evidence, the learned Magistrate, came to the conclusion that the first party was in possession over the disputed land on the date of the preliminary order and accordingly, directed maintenance of tranquility.
- XI. This Court also does not find any illegality, not to say any patent illegality that has been done by the learned Sessions Judge, Dibrugarh in determining the revision petition. Also no case of miscarriage of justice has been made out. The petitioners are still at liberty to claim their right, title and interest over the disputed property and even to seek recovery of possession through a competent Civil Court, however, subject to the period of limitation.
- XII. The findings arrived at by the learned ADM and affirmed by the learned Sessions Judge, Dibrugarh deal only with the factum of the possession of the party as on a particular date and it confers no title upon the 2nd party to remain in possession of the disputed property and such orders are always subject to decision of a Civil Court. The only way left for the second party is to get relief in a Civil Court by

filing properly constituted suit permissible under law.

XIII. In view of the aforesaid discussion and reasons, this Court do not find any merit in this criminal petition. Accordingly, same stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant