

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22078 of 2015

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Raghunath Chaudhary

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjiv Kumar-No.2-Advocate

For the State : Mr. Panchanand Pandit (A.P.P.)

For the O.P. Nos.2 and 3 : Mr. N. K. Agrawal- Sr. Advocate

Mr. Vijay Anand-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 17-07-2015

Heard learned counsel for the petitioner, learned
counsel for the opposite parties as well as learned Additional
Public Prosecutor.

2. Petitioner has challenged order dated 10.01.2015
passed by the Sub-divisional Magistrate, Mahua, Vaishali in Misc.
Case no.442 of 2014 (Laxmi Narayan Chaudhary & others vrs.
Raghunath Chaudhary & others) whereby and whereunder the
learned lower court has attached one decimal of Khesra no.1090
(middle from North) having boundary, North- land of applicant
bearing Khesra no.1091, South- land of opposite party of Khesra
no.1090, East- land of applicant Khesra no.1090, West- land of
applicant Khesra no.1090 under guise of Section 146(1) Cr.P.C. as
well as appointed O/c Mahua P. S. as receiver in terms of Section
146(II) Cr.P.C.

3. During course of hearing, when different



Annexures have been gone through, it is apparent from Annexure-2, notice issued in pursuance of Section 144 Cr.P.C., that it had commenced with regard to Khesra no.1091 having an area of one decimal without specifying the same with boundary. Furthermore, from Annexure-3, the order of conversation whereby and whereunder the proceeding under Section 144 Cr.P.C. was converted under Section 145 Cr.P.C. purported to be in terms of Clause-(1) of Section 145 Cr.P.C., it is evident that same was also with regard to Khesra no.1091 area one decimal without specifying the boundary. Subsequently thereof, as is evident from Annexure-4, a petition was filed on behalf of opposite party no.2 for amendment of proceeding divulging Khesra no.1090 area one decimal (middle from North) having boundary North- part of 1091 belonging to applicant, South- part of 1090 belonging to opposite party, East-part of 1090 belonging to applicant and West- part of 1090 belonging to applicant, which was objected to as is evident from Annexure-5 on behalf of petitioner, however, amendment was allowed. Subsequently thereof, on a prayer made on behalf of opposite party, the land was attached at an earlier occasion vide Annexure-6, order dated 26.03.2013 and vacated vide Annexure-7, order dated 10.04.2013.

4. During course of argument, perceiving a technical

flaw, learned counsel for the opposite party has been requested to explain:-

(a) On account of absence of boundary at an initial stage of the proceeding really identified the land under dispute properly.

(b) Whether amendment was permissible in accordance with Section 145 Cr.P.C. that too, by substituting the plot number along with boundary in the background of the fact that there was no material on the record to suggest like so.

5. The learned counsel representing opposite party has submitted that because of the fact that both parties have accepted the aforesaid event and are contesting over the same. On account thereof, it will be presumed that actual dispute relates with plot bearing survey plot no.1090 having an area of one decimal with specific boundary as disclosed in the proceeding. Consequent thereupon, the proceeding under Section 145 Cr.P.C. happens to be in accordance with law and in likewise manner, as the emergent situation prevails, the order of the attachment. The learned counsel further referred A.I.R. 1957 Nagpur Page 27 in support of his submission.

6. The learned counsel for the petitioner submits that in the Cr.P.C., more particularly, under Section 145 Cr.P.C., there



happens to be no such provision. Furthermore, conversation of proceeding from 144 Cr.P.C. to 145 Cr.P.C. happens to be an order passed under Sub-section-1 of Section 145 Cr.P.C. Because of the fact that proceeding under Section 144 Cr.P.C. was with regard to survey plot no.1091 on account thereof, a preliminary order made under Section 145(1) Cr.P.C. co-relates with survey plot no.1091. Now the survey plot has been changed. Both the survey plots have got two independent identity and on account thereof, mere substitution of survey plot number will not satisfy the ingredients of initiation of proceeding under Section 145(1) Cr.P.C., as for the aforesaid survey plot no.1090, there was no report or any kind of material to substantiate that there was livelihood of breach of peace relating to survey plot no.1090. In likewise manner, the attachment made by the order impugned happens to be.

7. Learned Additional Public Prosecutor endorsed the view taken by the learned counsel for the petitioner.

8. Heard the parties. Perused the record.

9. Sub-section-1 of Section 145 Cr.P.C. speaks regarding initiation of a proceeding under Section 145 Cr.P.C. on the basis of a report of a Police Officer or upon other information disclosing that a dispute is likely to cause a breach of peace



concerning any land or water or the boundary thereof. At the time of initiation of a proceeding under Section 144 Cr.P.C., it was with regard to survey plot no.1091 and was initiated on a Police Report so submitted disclosing the aforesaid event relating to survey plot no.1091. Conversion of a proceeding under Section 144 to 145, though unknown in the eye of law has been recognized as an order passed under Sub-section 1 of Section 145 Cr.P.C. and on that very score, there happens to be series of judicial pronouncement, concerning survey plot no.1091.

10. In the aforesaid background, the proceeding rightly been converted with regard to survey plot no.1091, though was vague on account of absence of boundary in the background of the fact that only one decimal of survey plot no.1091 was under dispute without proper specification. Subsequently thereof, the prayer for amendment by way of substitution of survey plot number with a specific boundary and further, allowing the same, as it happens to be the substantial change in the proceeding will not justify its prevalence and in likewise manner, the order impugned by which the attachment has been made. Citation referred by the learned counsel for the opposite party is not going to help anyway, as in the aforesaid judgment, there was addition of survey plot relating to the original plot, whereupon proceeding

was drawn up, and further, order was also passed on that score which also been found serious error, as is evident from Paragraph- 9. So far, scope of Section 482 Cr.P.C. is concerned, it is to prevent abuse of process of Court.

11. That being so, the order dated 10.01.2015 passed by the learned lower Court is set aside. Petition is allowed. However, the parties will be at liberty to pray for launching a fresh proceeding if in the circumstances so necessiates.

Vikash/-

(Aditya Kumar Trivedi, J)

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