

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42688 of 2012

1. Md. Hasib Son Of Late Safiruddin Resident Of Village - Sahjana Achchepur, Police Station - Kadwa, District - Katihar.
2. Niyaz Ahmad @ Md.Niyaz Son Of Late Md. Suleman Resident Of Village - Madhepur, P.S. - Balrampur, Distt. - Katihar, At Present Village - Sahjana P.S. - Kadwa, District - Katihar.
3. Sabbir @ Md.Sabbir Son Of Late Mohiuddin Resident Of Village - Sahjana, P.S. - Kadwa, District - Katihar.
4. Kalu @ Md. Kalu Son Of Baharuddin Resident Of Village - Achchepur, Police Station Dagarwa, District - Purnea.
5. Md.Razzaque @ Sajjad S/O Late Mohiuddin Resident Of Village - Achchepur, Police Station Dagarwa, District - Purnea.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Khwaja Gharib Nawaj Son Of Late Khwaja Mohammad Resident Of Village Achchepur, Police Station Dagarwa, District - Purnea.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Qumrul Hoda

For the Opposite Party/s : Mr. Yogendra Kr.Singh (App)

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

2 14-05-2015

This criminal miscellaneous application is filed with a prayer to quash the order dated 22-12-2011 passed by the Subdivisional Magistrate, Barsoi, District-Katihar.

2. The grievance of the petitioners is that on the basis of a report submitted by the concerned official, the Subdivisional Magistrate initiated proceeding under section 144 of the Code of Criminal Procedure in respect of the land, but on 22-12-2011 he converted this proceeding into a proceeding under section 145 of the Code of Criminal Procedure. According to the learned counsel for the petitioners, such a course is not permissible. Learned counsel for the respondents submits that the Subdivisional Magistrate has assigned cogent reasons for converting the

proceedings.

3. There is substantial difference between not only of the nature of the proceedings to be initiated under section 144 and section 145 of the Code of Criminal Procedure, but also the nature of enquiry and adjudication as well as the consequences that flow there from. The proceedings under section 144 Cr.P.C. are purely in relation to maintenance of law and order, and in contrast in proceedings under section 145 Cr.P.C. a semblance of verification of the rights of two rival parties is to be undertaken. Further, once a civil suit is instituted in respect of particular item of property, the question of proceeding under section 145 Cr.P.C. in relation to that very particular property does not arise. It is brought to the notice of the Court that T.S. Case No. 40 of 2009 is pending in the court of Sub-Judge-I, Katihar in respect of the very property.

4. Therefore, this criminal miscellaneous application is allowed and the order dated 22-12-2011 passed by the Subdivisional Magistrate, Barsoi in Case No. 55(M)/11 is quashed.

B.KRoy/-

(L. Narasimha Reddy,CJ)

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