

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34575 of 2012

- =====
1. Ajit Kumar @ Ajit Sharma son of Sri Ram Pravesh sharma, Assistant, Palganj Block, P.S. Paliganj, District- Patna.
 2. Dudh Nath Tiwary son of Late Shiv Nandan Tiwary, resident of village Amarthia, P.S.Karakat, Distt- Rohtas, presently residing at Adarsh Vihar, Rukunpura, P.S. Rukunpura, Distt- Patna. Petitioner/s

Versus

1. State of Bihar
 2. Vijay Kumar Singh son of late Murari Prasad Singh, resident of Shastri Nagar, P.S. Shastrinagar, District- Patna. Opposite Party/s
- =====

Appearance :

For the Petitioner/s : Shri. Rana Ishwar Chandra, Advocate
For the Opposite Party/s : Shri. Indra Kumr Singh (APP)

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

3. 09-03-2015. Heard.

There was a proceeding under Section 144 Cr.P.C. between the petitioners and Opposite Party No.2 for a land dispute. The parties had appeared before the Executive Magistrate and had filed their show cause as was required on the notice issued against them under section 144 Cr.P.C. The parties were finally heard on 26.4.2011 and the Executive Magistrate, Danapur, by an order passed lateron on that date, converted the proceedings of 144 Cr.P.C. into one under section 145 Cr.P.C. While the learned Executive Magistrate, Danapur was passing the order, he observed that after hearing the learned counsel for the parties, perusing the records and the documents filed by them in the proceedings, he found that there was a land dispute between the two sides, the decision of which was not possible (under Section 144 Cr.P.C.), as it may require taking of evidence.

Thus, while disposing of the proceedings under Section 144 Cr.P.C., the same was converted into one under section 145

Cr.P.C, and notices were issued to both the sides. As a matter of fact the learned court below had initiated a fresh proceedings under section 145 Cr.P.C. and as such, the impugned order was an order under section 145 (1) Cr.P.C.

It is not unknown to law that a 144 Cr.P.C. proceeding may be converted into one under section 145 Cr.P.C. for initiating a fresh proceeding under Section 145 Cr.P.C. But what is required is that the ingredients which were required to be shown to the Executive Magistrate to his satisfaction, have to be shown and placed either from the records or from the causes shown by the parties. It has to be shown to the satisfaction of the Executive Magistrate that there was a bonafide land dispute between the two parties and that the land dispute was in respect of a particular land and the bonafide land dispute had given rise to an apprehension of the breach of the peace.

The Executive Magistrate might be said to have converted under section 144 Cr.P.C. into one under section 145 Cr.P.C. but in any view, it is always an independent judicial order of initiating a proceeding under section 145 Cr.P.C. after being satisfied about the existence of the three conditions. If he does not find even one of the three conditions existing up to his satisfaction, then it may not be proper for him to initiate a proceeding under section 145 Cr.P.C.

I have extracted the order, which was passed by the learned Executive Magistrate in converting the proceedings of 144 Cr.P.C. into that of under section 145 (1) Cr.P.C. after he has perused the papers and documents submitted to him. He had also heard the learned counsel for the parties and thereafter, he had found that there was a land dispute between the parties and

what he found further was that to resolve the dispute, it was not possible in a proceeding under section 144 Cr.P.C. as the same required resolution of the dispute in a proceeding under section 145 Cr.P.C. by taking evidence. The mere existence of bonafide land dispute between the two parties may be there, but in absence of the apprehension of the breach of the peace on account of that bonafide land dispute, the Magistrate could not have jurisdiction to initiate a proceeding under section 145 (1) Cr.P.C.

What this court finds is that while prosecuting Cr. Rev. No.714 of 2011 before learned Additional District and Sessions Judge-VI, Danapur, these submissions were placed before him but he justified the order which was passed to convert a proceeding under section 144 Cr.P.C. into one under section 145 Cr.P.C.

In the result, what this court finds is that initiation of the proceeding under section 145 Cr.P.C. after converting that under section 144 Cr.P.C. proceeding, was a sheer abuse of the process of the court and as such, the same need not be allowed to continue. The order is hereby quashed.

It is made very clear that in case the Magistrate is satisfied about the three conditions still existing on the spot in respect of the subject matter of dispute, he shall be free to initiate the very proceeding.

The petition is allowed.

(Dharnidhar Jha, J.)

ahk/-

U		T	
---	--	---	--