

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.97 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- AURANGABAD

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1. Mithilesh Kumar Sinha
 2. Madhusudan Prasad
Both sons of Late Sheo Shankar Prasad
 3. Rajeev Ranjan Prasad @ Ranjan Kumar Sinha Son of Madhusudan Prasad.
All resident of Village Powai, P.S. Salaiya District Aurangabad.

.... Petitioners

Versus

1. The State of Bihar.
2. The Sub Divisional Officer, Aurangabad.
3. Sita Ram Singh Son of Late Durga Singh
4. Sanjay Prasad Singh
5. Janardan Prasad Singh
Both sons of Late Gupteshwar Singh
6. Rajnish Kumar Singh son of Late Mahesh Singh,
All resident of Village Powai, P.S. Salaiya District Aurangabad.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad Sinha, Advocate
For the O. P. No. 3 to 6 : Mr. Ajit Ranjan Kumar, Advocate
Mr. Harendra Kumar Singh, Advocate
For the State : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-11-2015

By way of an application under Section 482 of the Code
of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the petitioners
seek quashing of the order, dated 27.09.2014, passed by the

learned Sub-Divisional Magistrate, Aurangabad, in Case No. 1299 of 2014, whereby and whereunder a proceeding under Section 144 Cr.P.C., has been converted into a proceeding under Section 145 Cr.P.C.

2. It has been contended by the learned counsel for the petitioners that without giving any finding about any apprehension of breach of peace in between the parties relating to a piece of land, the learned Sub-Divisional Judicial Magistrate has converted the proceeding from Section 144 Cr.P.C. into Section 145 Cr.P.C. It has further been contended that before converting the proceeding under Section 145 Cr.P.C., the learned Magistrate must have recorded his reason that the dispute is likely to cause breach of peace between the parties as recording of reason is *sine qua non* for converting a proceeding under Section 145 Cr.P.C. and in absence of that the impugned order is without jurisdiction and is not maintainable.

3. Learned counsel appearing for respondents no. 3 to 6 concedes that the order passed by the learned Sub-Divisional Judicial Magistrate, Aurangabad does not indicate that before passing the order the Magistrate has recorded his satisfaction that the dispute is likely to cause breach of peace between the parties.

4. It is well-settled that the object of Section 145



Cr.P.C. is merely to maintain law and order and to prevent a breach of peace by maintaining one or other parties in possession. The object is preventive and that is operational only until such time as final or formal adjudication on the rights affected may be obtained and carried into effect by the competent Court to deal with the matter in due course of time. The existence of a dispute likely to cause a breach of peace is a condition lying at the root of the powers conferred under Section 145 Cr.P.C. Since the learned Sub-Divisional Judicial Magistrate has not recorded his satisfaction regarding likelihood of breach of peace between the parties relating to land in question, the order impugned cannot be sustained.

5. In that view of the matter, the application is allowed. The impugned order dated 27.09.2014, passed by the learned Sub-Divisional Magistrate, Aurangabad in Case No. 1299 of 2014, is hereby quashed.

(Ashwani Kumar Singh, J.)

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