

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43783 of 2012

Arising Out of Misc. Case No. 1108 of 2008/317 of 2011/41 of 2012, pending the court of Sub-divisional Magistrate, Arwal, District- JEHANABAD

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1. Srinivas Sharma S/O Rampati Singh Resident Of Village- Sohasa, P.S.- Mehandia, District- Arawal
 2. Baradraj Sharma S/O Srinivas Sharma Resident Of Village- Sohasa, P.S.- Mehandia, District- Arawal
 3. Manoj Sharma @ Manoj Kumar Sharma S/O Srinivas Sharma Resident Of Village- Sohasa, P.S.- Mehandia, District- Arawal

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sudarshan Sharma S/O late Sabhapati Singh Resident Of Village- Sohasa, P.S.- Mehandia, District- Arawal
3. Sridhar Sharma S/O..... Resident Of Village- Sohasa, P.S.- Mehandia, District- Arawal

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Shri Vikash Kumar Sharma, Advocate.

For the State of Bihar : Shri Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 16-04-2015

Heard.

The petition has been filed against order dated 4.7.2012 by which the learned Executive Magistrate, who was seized with the hearing of Case No. 1108 of 2008/317 of 2011/41 of 2012

(Sudarshan Sharma Vs. Srinivas Sharma & ors.) rejected the petition filed under Section 145 (5) Cr.P.C. by the 2nd party seeking dropping of the proceeding on account of the fact that no apprehension of breach of peace was existing or existed for proceeding under Section 145(1) Cr.P.C.

The petition was indeed filed on 17.4.2012 and that was put up on 2.5.2012. But, again it was directed to be placed before the learned Executive Magistrate on 11.5.2012 on which date deviating from the provision of the Cr.P.C. and inventing his own procedure which was unknown to the rule of law, the learned Executive Magistrate directed that the guidance of the Govt. Advocate, Arwal be sought. Accordingly, the Government Advocate, Jehanabad furnished his opinion to the court which was received by it on 30.6.2012 and, lastly, considering the opinion of the Government Advocate, Jehanabad the learned Executive Magistrate rejected the petition under Section 145 (5) Cr.P.C. filed by the petitioners before him and directed the petitioners to file their Written Statement and further directed the Anchal Adhikari concerned to file his report immediately in the light of order dated 19.1.2012.

This Court does not know as to what was the order dated 19.1.2012, but as regards the petition filed by the petitioners under Section 145(5) Cr.P.C., there is no dispute that the petition had been

filed in the light of the fact that there was earlier a partition between the parties in 1975 by metes and bounds and their shares were defined and demarcated and each of the parties including the petitioners had been put into possession of his share of the immovable properties.

The proceeding was initiated on a petition, it is the submission, and notices were issued after conversion of the proceeding under Section 144 Cr.P.C. into one under Section 145 Cr.P.C. The petitioners appeared and filed written statement pointing out that no real reasons, as are required to be shown and to be satisfied about, were shown to the learned Executive Magistrate so as to initiating a proceeding under Section 145 (1) Cr.P.C. The learned Executive Magistrate adopted a high breed procedure by seeking opinion of the learned Government Advocate, Jehanabad and, accordingly, the learned Government Advocate, Jehanabad furnished his opinion which resulted in the impugned order.

On perusal of the scheme and procedure set down by Section 145 Cr.P.C., it appears that on being satisfied from a report of the police officer or upon other information regarding likelihood of the breach of the peace concerning any land or water or the boundaries thereof within his jurisdiction, the Executive Magistrate may make an order in writing, stating the grounds of his being so satisfied and may require the parties to the proceedings, who are



concerned with the dispute, to attend his court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. That particular provision under Section 145(1) Cr.P.C. could be read with sub-section (5) of Section 145 Cr.P.C. which lays down that nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or had existed; and in such a case the Executive Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed. But, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final. Thus, what appears is that the very provision of Section 145(5) Cr.P.C. vests a right into a party to the proceeding under Section 145 Cr.P.C. to place an information by showing to the Executive Magistrate the absence of grounds for initiating a proceeding under Section 145(1) Cr.P.C.. The same provision indicates that the Magistrate on being shown the non-existence of such reasons may cancel his order under Section 145(5) Cr.P.C.. That particular provision may not require Executive Magistrate to be satisfied about the existence or otherwise of the reasons cancelling the order under Section 145 Cr. P.C. but he has to be satisfied about the existence of reasons showing non-existence of the ground requiring the



cancellation of the order under Section 145(1) Cr.P.C. because the initial order has to be passed on being satisfied about the existence of the grounds and if the reasons are shown to the Magistrate and on his being satisfied that no such ground exists, he may cancel the proceeding under Section 145(5) Cr.P.C.. This itself sufficiently indicates that it is a statutory duty cast upon the Magistrate which has never to be vested into him by any other authority or person. He has to apply his mind to the reason which is shown to him by the party appearing before him as regards non-existence of the reasons for cancelling it and he has to take a decision on such matters.

What happened in this case is that the learned Executive Magistrate appeared not concerned about the law and the legal provision rather he was concerned with the call of his own conscience and acted in a manner which was never permitted by the Cr.P.C. through Section 145 Cr.P.C. which required him to act on receipt of a police report as per the provision of Section 145 Cr.P.C. and not otherwise. There could not be any law other than Chapter X of the Code. It lays down the procedure to try and judge a particular proceeding. Even some rules of evidence cannot be fully adhered to nor has evidence to be taken in the proceeding as it has to be done by Court otherwise.

In this background of the case, as regards Chapter X of the



Cr.P.C., it was desirable that the learned Executive Magistrate ought to have confined himself to the provisions of the Cr.P.C. and ought not to have directed to obtain the opinion of the learned Government Advocate. The Government Advocate, Jehanabad, could not have any role to advise a Court which is seized with the hearing of such a proceedings. The Executive Magistrate was never supposed to have consulted or could have solicited an opinion of any Officer or authority who had never appeared in the proceeding. The Court is also conscious of receipt of the opinion by the Court but that receipt of opinion is confined only to the parties or their counsel by way of rendering assistance to this Court, but soliciting the opinion from the Government Advocate was completely wrong and out side the purview of Section 145 Cr.P.C. This Court does not approve of the manner in which the learned Govt. Advocate was also coming to render his opinion in a manner which was never supposed to be rendered by him. If the court was desiring some suggestion from him, then he should have appeared by filing his presence or by appearing before it and then should have given his suggestion. He was not a party to the proceeding nor he was appearing for any party and, as such, rendering of the opinion by the Government Advocate, Jehanabad simply speaks of untrained behaviour of the Government Advocate. As such, untrained action of the Government Advocate,

Jehanabad is deprecated by this Court and the action of the Executive Magistrate is also deprecated.

After perusing the provision of Section 145 Cr.P.C., I find that the order dated 4.7.2012 is bad in law and it is set aside and quashed.

Let the matter be re-heard from the stage of filing of the petition under Section 145 (5) Cr.P.C. In my opinion, it is not conducive that the matter be heard and disposed of by the same Executive Magistrate, if he is still continuing to do the work of Sub-Divisional Officer, Arwal. Let the SDM, Arwal hear and decide the petition filed by the petitioners on 17.4.2012 in the light of the provision of the Cr.P.C.

The petition succeeds and the same is allowed.

(Dharnidhar Jha, J)

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