

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36933 of 2012

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Kumar Rakesh Ranjan @ Madhukar, son of late Bishwanath Prasad, Resident Of
Village Chandan, Police Station- Chandan, District Banka.

.... Petitioner/s

Versus

The State of Bihar, through the Anchal Adhikari, Chandan, Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate

For the Opposite Party/s : Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 07-05-2015

The petitioner challenges the order dated 17.08.2012
passed by the Sub-Divisional Magistrate, Banka- respondent herein.

The brief facts are that the Circle Officer of Chandan,
of Banka District addressed a letter dated 20th June, 2012 to the
respondent stating that the name of father of the petitioner is entered
in the revenue records in respect of the land in Khata No.176,
Khesara No.984/2714 being an extent of 18 decimals situated in
Chandan village and the petitioner is in enjoyment of the said land.
He stated that the land is abutting the market place in the village and
the petitioner is taking steps to sell the land to the intending
purchasers and there is resentment in the residents of the village. At
the end, he made a request to the respondent to initiate a proceeding
under Section 144 of the Code of Criminal Procedure, since there is

every likelihood of the breach of the peace in the village.

The respondent took note of the same. However, on 17.08.2012, he passed an order directing that it would not be possible to get a detailed enquiry, and to examine the witnesses under Section 144 Cr.P.C., and accordingly, converted the proceedings into those under Section 145 Cr.P.C. Hence, this petition under Section 482 Cr.P.C.

Heard Sri Ajay Kumar Singh, learned counsel for the petitioner and Sri Rana Randhir Singh, learned Additional Public Prosecutor for the State.

The nature of steps, that are required to be taken in the proceedings under Section 144 Cr.P.C., on the one hand, and in 145 Cr.P.C. on the other hand, are substantially different. While the former is almost a unilateral action, whereunder the Executive Magistrate can impose restrictions on the movement of the people, the latter is a seriously contested dispute, between the two sets of parties, attempting to assume possession of the land. It is only when both the parties are before the concerned authority that the proceedings under Section 145 Cr. P.C. can be initiated.

Even if the facts mentioned by the Circle Officer in his communication dated 20th June, 2012 are taken to be as true, they cannot constitute the basis for initiating the proceedings under

Section 145 Cr.P.C. There is no scuffle for possession. The reasons mentioned by the Circle Officer do not constitute the basis for the proceedings under Section 145 Cr. P.C.

Therefore, the petition is allowed, and the order dated 17.08.2012 passed by the Sub-divisional Magistrate in Misc. Case No.579 of 2012, is set aside.

(L. Narasimha Reddy, CJ)

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