

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31223 of 2012

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1. Kuber Thakur S/O Late Shiv Bhivi Thakur Resident Of Village + Post-Gaura, P.S.- Bihiya, District- Bhojpur, At Present Nutan Brick Lin Industries, Mauza- Gundi (Bhavangava) Saraeya, P.S.- Krishangarh (Badahara), District- Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ram Ashish Thakur S/O Late Dev Narayan Thakur Resident Of Village-Gaura, P.S.- Bihiya, District- Bhojpur, At Present Nutan Brick Klin Industries, Mauza - Gundi (Bhavangava) Sharaeya, P.S.- Krishangardh (Badahara), District- Bhojpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arjun Prasad

For the Opposite Party/s : Mr. Renu Kumari (App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

5 09-04-2015 Heard.

The attachment order under Section 146 Cr.P.C. was passed on 11.05.2012. A petition was filed for withdrawal of the petition and that petition was heard in detail and the same was dismissed by an order passed on 09.02.2012. Yet another petition was filed in the proceeding under Section 145 of the Cr.P.C. for withdrawal of the order under Section 146(1) Cr.P.C. which had been passed initially on 11.05.2005 and the learned Executive Magistrate holding that there was no state of emergency existing at the spot withdrew the order under Section 146(1) Cr.P.C. and discharged the receiver.



The challenge is to the order dated 11.05.2012 on the ground that the Executive Magistrate being a Court of Criminal Jurisdiction does not have the power under the Cr.P.C. to withdrawal or review his own order.

The Court refers to the first proviso appended to Section 146 Cr.P.C. which runs as under:-

“Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute”.

As may appear from the very proviso the conditions being met as indicated by it, the Executive Magistrate may withdraw the order under Section 146(1) Cr.P.C. which had earlier been passed by him. This is the reason that an order of attachment has been adjudicated as an interlocutory order as the same could be withdrawn by the Court which had passed it on the logic as indicated above, and the language the of the provision just noticed, the Court does not find any illegality in the order and, as such, the petition is dismissed as of no merit.

However, the proceedings under Section 144 Cr.P.C. was initiated on 05.12.2010 and it was pending for about six and half years requiring that the same be brought to its logical conclusion.

Let the Executive Magistrate who is trying the case

no.173 of 2010 (Kuber Thakur & Ramashish Thakur) be directed to take up the hearing of the proceeding on a day to day basis and conclude the proceeding in a maximum period of nine months from the date of receipt/production of a copy of the present order.

(Dharnidhar Jha, J)

B.Kr./-

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