

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10255 of 2012

- =====
1. Md. Mamnun Ansari, Son of Late Maniruddin
 2. Md. Mahboob Ansari, Son of Late Maniruddin
 3. Md. Mansoor Ansari, Son of Late Maniruddin
- All residents of Village Routa, P.S. Routa, District Purnia.

.... Petitioners

Versus

1. The State of Bihar
 2. Jagdish Prasad Singh, Son of Kishan Lal Singh
 3. Lalmani Devi, Wife of Jagdish Prasad Singh
 4. Raj Kumar Saha @ Raju, Son of Awadh Bihari
- O.P. Nos.2 to 4 are residents of Village Routa, P.S. Routa, District Purnia

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Arun Prasad Ambastha, Advocate
		Mr. Binay Kumar Sinha, Advocate
For the State	:	Mr. Suraj Prasad Singh, APP
For O.P. Nos.2, 3 & 4	:	None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-05-2017

This petition has been filed by the petitioners for quashing order dated 30.01.2012, passed in Criminal Revision No.362 of 2011/Trial No.15 of 2011 by Additional Sessions Judge, FTC-I, Purnia, whereby order dated 22.09.2011, passed by the Sub-divisional Officer, Baisi in Case No.185M of 2011 converting a proceeding under Section 144 of the Code of Criminal Procedure into Section 145 of the Code of Criminal Procedure in order to decide factum of possession of the land in question was set aside.

2. The learned counsel appearing on behalf of the petitioners submits that in the instant case a proceeding under Section



144 of the Code of Criminal Procedure was initiated by the Sub-divisional Magistrate, Baisi vide order dated 23.07.2011 and within two months, i.e., on 22.09.2011 converted the proceeding under Section 145 of the Code of Criminal Procedure to decide the factum of possession of the land in question as in his opinion the proceeding was necessary to decide the factum of possession. Learned counsel for the petitioners has placed reliance on case of *Khedu Mahto v. Prem Sundari*, reported in 1976 PLJR 187, which is an order passed by a Division Bench of this Court and the Additional Sessions Judge, FTC-I, Purnia relying on the decision of a Single Judge Bench in case of *Udai Narain Singh v. State of Bihar*, reported in 2006 (4) PLJR 207, set aside the conversion order. However, the fact remains that in *Udai Narain Singh (supra)* case the decision rendered by a Single Judge Bench did not consider the judgment of the Division Bench passed in case of *Khedu Mahto (supra)*, moreover judgment passed by Division Bench is binding on the same point.

3. However, No one appears on behalf of the opposite party nos.2 to 4 though name of the learned counsel appears in the daily cause list.

4. The learned Additional Public Prosecutor appearing on behalf of the State supports the impugned order stating that there is no illegality in it. The learned Sub-Divisional Magistrate, Baisi ought to have mentioned while converting proceeding under Section 145 of



the Code of Criminal Procedure regarding existence of apprehension of breach of peace concerning the land in question for which the dispute exists between both sides.

5. Having considered rival submissions and on perusal of the record, I find that Case No.185M of 2011 under Section 144 of the Code of Criminal Procedure was initiated by order dated 23.07.2011 against both parties on the petition of Md. Mamnun Ansari and by order dated 22.09.2011 the Sub-divisional Magistrate, Baisi converted the said proceeding into Section 145 of the Code of Criminal Procedure. On perusal of the show-cause filed by both sides and hearing the argument, in order to decide the factum of possession of the land in question, the said order was challenged by the other side opposite party no.2 in the court of Sessions Judge, Purnia vide Criminal Revision No.362 of 2011, the same was disposed of by the learned Additional Sessions Judge, FTC-I, Purnia by order dated 30.01.2012 setting aside the conversion order dated 22.09.2011 relying on a decision of this Court, i.e., *Udai Narain Singh (supra)* holding that the Magistrate while converting the proceeding under Section 145 Cr.P.C. has not observed about existence of apprehension of breach of peace. However, in the present case a proceeding under Section 144 of the Code of Criminal Procedure was initiated on 23.07.2011 vide Case No.185M of 2011. A proceeding under Section 144 of the Code of Criminal Procedure is initiated in urgent cases of nuisance or



apprehended danger, so it is apparent that at the time of initiating a proceeding under Section 145 of the Code of Criminal Procedure apprehension of breach of peace existed. In case of *Khedu Mahto (supra)* the Division Bench of the Court also relying to earlier decision referred as *Raja Lal Singh v. Ram Prasad Singh* (1975 Bihar Bar Council Journal 263) observed at page 269 as follows:-

"The Magistrate, who has heard the parties in the proceeding under Section 144, perused their show cause petitions and looked into the police report and other documents, can legitimately be satisfied on those materials that there is an apprehension of a breach of the peace relating to possession over land. I am unable to appreciate as to how if, on those very materials, the learned Magistrate, who could have passed an order initiating a proceeding under Section 145 within two months from the date of the initiation of the proceeding under Section 144, could not do so only on the next day of the expiry of the period of the said two months. The matter may be different if sufficiently long period has intervened between the date of the expiry of the proceeding under Section 144 and the date of the initiation of the proceeding under Section 145."

6. In the said judgment of *Khedu Mahto (supra)*, the Hon'ble Court further hold as such:

"In my judgment, the order drawing up the proceeding under Section 145 passed during the pendency of the proceeding under Section 144 will not be illegal merely because the Magistrate has not said in the order in so many words regarding this satisfaction about existence of an apprehension of a breach of the peace. It



is obvious that, if the Magistrate was not satisfied about existence of an apprehension regarding a breach of the peace, he would have dropped the proceeding under Section 144 itself, instead of converting it into a proceeding under Section 145."

7. Considering the same principle in the present case, I find that proceeding under Section 144 of the Code of Criminal Procedure was initiated and had there not been any apprehension of breach of peace, the Magistrate would have dropped the proceeding but being dissatisfied considering material on record come to conclusion that the factum of possession of the land in question, cannot be decided in a proceeding under Section 144 Cr.P.C. so it is required to be converted into a proceeding under Section 145 Cr.P.C. so rightly he converted the proceeding under the same provision, therefore, the order dated 30.01.2012, passed by Additional Sessions Judge, FTC-I, Purnia in Criminal Revision No.362 of 2011/Trial No.15 of 2011 is set aside.

8. The quashing petition stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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