

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14236 of 2017

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

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Gorakh Singh @ Gorakh Nath Singh son of Late Ram Ashish Singh, resident of village- Saidpur Dighwara, P.S.- Dighwara, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Amarjeet Singh son of Late Shubh Narayan Singh, resident of village- Saidpur Dighwara, P.S.- Dighwara, District- Saran.
3. Subhash Rai sn of Late Bhagwat Rai, resident of village- Saidpur Dighwara, P.S.- Dighwara, District- Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Simnha, Advocate
For the Opposite Party/s : Smt. Anita Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-11-2017

Heard learned counsel for the petitioner and learned counsel
for the State.

2. Under Section 146 of the Code of Criminal Procedure
(for short 'CrPC') a Magistrate can attach the subject of the dispute
under the following circumstances:-

- (i) If he considers the case to be one of the emergency; or
- (ii) If he decides that none of the parties was in possession; or
- (iii) If he cannot decide which of them was in possession.

3. The order of attachment remains in force until a competent
court decides the right of the parties or until the Magistrate, being



satisfied that there is no longer any likelihood of breach of peace, withdraws it. The Magistrate is also vested with the powers to appoint a receiver of the property.

3. In the present case, initially a proceeding under Section 144 of the CrPC was started between the parties with respect to the land bearing Khata No.1221, 1015, 1016, 1017 and 3575 admeasuring 24 Bigha situated at village Saidpur under Circle and P.S.-Dighwara, District- Saran. Later on, the proceeding under Section 144 of the CrPC was converted into one under Section 145 of the CrPC. While the proceeding under Section 145 of the CrPC was pending, the opposite party no.2 filed a petition under Section 146 (1) of the CrPC for attachment of the disputed land and appointment of a receiver stating therein that the petitioner and his associates being variously armed came on the land and tried to take its forcible possession, but due to timely intervention by the people of the locality they could not succeed. It was also alleged that the petitioner and his associates are bent upon to grab the land and there was likelihood of blood-shed. The learned Magistrate called for a police report in the light of the said application. The police went on the spot and verified the fact and submitted their report stating therein that there is a dispute between the parties with respect to possession of the land and the crops grown thereon giving serious apprehension of



blood-shed any time. The police in their report also stated that there is state of emergency in the matter and recommended for attachment of land and appointment of a receiver.

4. On receipt of such police report, after hearing the parties, the learned Magistrate being satisfied with the fact that the situation of emergency was existing, passed the order of attachment of the property and appointed the officer-in-charge of Dighwara Police Station as receiver.

5. The order passed by the learned Magistrate dated 01.02.2016 was challenged in the revision by the petitioner in the court of Sessions Judge, Saran, Chapra. The learned Sessions Judge, after hearing the parties and perusing the materials on record vide order dated 12.01.2017 dismissed the revision application holding therein that the order of attachment passed under Section 146(1) of the CrPC is inherently temporary in nature and the attachment of the disputed property and the appointment of a receiver therefor do not in any way determine the title of the parties and the order being interlocutory in nature no revision under Section 397(2) of the CrPC is maintainable.

6. The said order dated 12.01.2017 passed by the revisional court in Criminal Revision No.40 of 2016 has been challenged by the petitioner in the present application filed under Section 482 of the



CrPC.

7. Learned counsel for the petitioner submitted that the learned Magistrate and the learned Sessions Judge have failed to appreciate that there was no emergency and the order of attachment of the property has been passed merely on the basis of collusive police report. He submitted that irrespective of the fact that the land does not belong to the members of the opposite party no.2 and the petitioner is coming in peaceful possession of the land, an illegal order under Section 146(1) of the CrPC has been passed.

8. On the other hand, learned counsel for the State submitted that the order passed by the learned Magistrate does not suffer from any illegality. The order is neither without jurisdiction nor erroneous as the learned Magistrate has given a clear finding on the basis of enquiry conducted by the police that the case is of emergency.

9. I have heard learned counsel for the parties and carefully perused the impugned order passed by the revisional court as also the order passed by the court of Sub Divisional Magistrate, Sonapur, Saran.

10. I see no illegality in the order passed by the learned Sub Divisional Magistrate, Sonapur, Saran or in the order passed by the learned Sessions Judge, Saran, Chapra. The order passed under Section 146(1) of the CrPC is interlocutory in nature and is not



without jurisdiction. The learned Session Judge while dismissing the revision application has rightly held that in view of Sub Section (2) of Section 397 of the CrPC, the revision application filed against an interlocutory order is not maintainable. I also find that though the present application has been filed under Section 482 of the CrPC, the same is in the nature of second revision, which is barred under Sub Section (3) of Section 397 of the CrPC.

11. In that view of the matter, I see no merit in the present application. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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