

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50934 of 2014

Arising Out of order dt. 9.8.12 passed in Cr. Rev. No.09/2012 by Addl. Sessions Judge III, West Champaran, District Bettiah.

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Chandrika Sah, Son of Late Mukha Sah, Resident of Village - Sirisiya, P.S.- Sikta,
District - West Champaran

.... 2nd Party / Petitioner

Versus

1. The State of Bihar
2. Jiut Sah Son of Late Mukha Sah Resident of Village - Sirisiya, P.S.- Sikta,
District - West Champaran

.... 1st Party / Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Umesh Chandra Verma, Advocate.

For the Opposite Party/s : Mr. (APP).

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 27-11-2017

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

2. The petitioner is aggrieved by order dated 09.08.2012 in
Cr. Revision No. 09/2012 passed by learned 3rd Additional Sessions
Judge, West Champaran, Bettiah. By the impugned order, the learned
3rd Additional Sessions Judge, West Champaran, Bettiah has set aside
the order dated 19.11.2011 passed by the Sub Divisional Magistrate,
Narkatiaganj in Case No. 1002M/2009.

3. It appears that a proceeding under Section 145 Cr.P.C.
was initiated between the parties and the same was going on in the
court of the Sub Divisional Magistrate, Narkatiaganj. On 19.11.2011,



both the parties were present. An application U/S 145(5) Cr.P.C. was filed on behalf of the second party with a prayer to drop the proceeding and, despite there being an opposition by the first party, the learned Sub Divisional Magistrate allowed the application U/S 145(5) Cr.P.C. and recalled the order dated 12.03.2010 passed under Section 146(1) Cr.P.C.

4. It is this order which was assailed in revision before the learned 3rd Additional District & Sessions Judge, West Champaran, Bettiah. The learned revisional court was of the view that dropping of the proceeding on the basis of an application U/S 145(5) Cr.P.C. was not just and proper and, hence, the said order was set aside.

5. Learned counsel for the petitioner has assailed the revisional order and submits that there was no illegality or infirmity in the order passed by the Sub Divisional Magistrate, Narkatiaganj dropping the proceeding U/S 145(5) Cr.P.C. and, hence, interference with the same in the revisional jurisdiction was not just and proper.

6. On the other hand, learned counsel representing the State submits that instead of taking a proceeding U/S 145 Cr.P.C. to its logical end by holding an inquiry as envisaged under Section 145(4) Cr.P.C., the Sub Divisional Magistrate had no reason to drop the proceeding itself on a mere asking by the second party. It is further submitted that, in fact, the nature of the order passed by the



Sub Divisional Magistrate is such that it would give an impression that the Sub Divisional Magistrate has recorded a finding as to the title and possession of the second party.

7. I have heard learned counsel for the petitioner and learned A.P.P. for the State and perused the records.

8. A reading of the provision, as envisaged U/S 145 Cr.P.C., would show that once an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute is likely to cause a breach of the peace and such dispute exists concerning any land or water or the boundaries thereof, on being satisfied, the Executive Magistrate shall require the parties concerned in such dispute to attend his court and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. Section 145(4) Cr.P.C. provides for holding of an inquiry on the merits of the claims of the parties as to possession but not the claim to a right to possess the subject of dispute. Within the scope of sub-section (4) of Section 145 Cr.P.C. the Executive Magistrate is obliged to take evidences on behalf of the parties and shall decide as to who was the person in possession of the land and whether any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the magistrate.



9. In the present case, sub-section (5) of Section 145 of the Code of Criminal Procedure has been invoked to drop the proceeding, therefore, it would be justice and proper to take note of the said sub-section (5) of Section 145 Cr.P.C. as under:-

“(5) 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 has existed; and in such case the 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.”

10. On perusal of the records, it is evident that save and except the application of the second party stating that now there is no dispute between the parties over the possession of the land, there was no other cogent materials on the record to take a view that there is no likelihood of breach of peace arising out of the dispute with respect to possession over the land in question. The police report dated 27.06.2010 has been mentioned in the order passed by the Sub Divisional Magistrate according to which neither of the parties was cultivating the land and the land is being kept under constant vigil and tensions are still there. If this was the report of the police officer, there was no reason as to why the Sub Divisional Magistrate would drop the proceeding itself. The revisional court has committed no error by setting aside the order passed by the Sub Divisional Magistrate.



11. The application is thus dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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