

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.131 of 2015

Arising Out of PS. Case No.- Year- Thana- District- East Champaran

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Madan Mohan Pandey son of Late Amir Pandey, Resident of Village-
Bairiya, P.S.- Kesariya, Dist- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pramod Pandey Son of late Parasnath Pandey, Resident of Village-
Bairiya, P.S.- Kesariya, Dist- East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Madhurendra Kumar Mr. Avinash
For the State	:	Mr. Raj Kishore Singh(App)
For O. P. No. 2	:	Mr. Pramod Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 25-07-2017

Heard learned Counsel for the petitioner, learned Counsel representing the Opposite Party No. 2 and learned Additional Public Prosecutor appearing on behalf of the State.

2. The petitioner is aggrieved by an order, dated 08.08.2014, passed, in Case No. 40M/14, by learned Sub Divisional Magistrate, Chakia, East Champaran, whereby, exercising power under Section 146 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), he has attached the disputed land, bearing Khata No. 98, Plot No. 1453, area 0.17 dhurs, and has appointed the Officer-in-charge of



Kesariya Police Station as Receiver.

3. The order is being assailed on the ground that it does not confirm to be essential requirements of Section 146 (1) of the Code.

4. In order to resolve the controversy, which has arisen in the present application, the provision of Section 146 of the Code needs to be closely seen and examined, which reads thus:

“146. Power to attach subject of dispute and to appoint receiver –

(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

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



(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit Appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any civil Court, the Magistrate—

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.”

5. What can be easily found from a close scrutiny of Section 146 of the Code is that the Magistrate has been conferred power to attach subject of dispute and to appoint a Receiver after an order, under Section 145 (1) of the Code has been made, if he;



- (i) considers the case to be one of emergency, or
- (ii) decides that none of the parties was then in such possession as is referred to in Section 145 of the Code, or
- (iii) is unable to satisfy himself as to which party was then in possession of the subject of the dispute.

6. The said power of attachment is there with the Magistrate until a competent Court determines the right of the parties with regard to the person entitled to the possession thereof.

7. The proviso to sub-section (1) of Section 146 of the Code empowers the Magistrate to withdraw the attachment order at any time if he is satisfied that there is no longer any likelihood of breach of peace with regard to subject of dispute.

8. I must pause here to take note of the fact that the impugned order of attachment, under Section 146 (1) of the Code was passed on 08.08.2014. There is nothing on record to show as to whether the Magistrate has applied mind for the purpose of invoking the said proviso to Section 146 (1) of the Code.

9. As has been noticed above, this fundamental requirement to exercise power under Section 146 of the Code is



that the said power can be exercised at any time after making an order under sub-section (1) of Section 145 of the Code. There is another requirement for exercise of power under Section 146 of the Code that the Magistrate must consider the case to be one of emergency.

10. I may, now, see whether an order under Section 145 (1) of the Code can be said to have been made by the Magistrate or not.

11. It appears from the order sheet that based on the report of the Officer-in-charge of Kesariya Police Station, the Magistrate formed an opinion that there prevailed some tension between the parties over land dispute. Having recorded so, the Magistrate, by order, dated 16.06.2014, directed the proceeding under Section 144 of the Code to be converted into proceeding under Section 145 of the Code.

12. Now, coming to Section 145 of the Code, it is easily evincible that for exercise of power under the said Section, the Magistrate is required to be satisfied from the report of a police officer that a dispute is likely to cause breach of peace. Though, in the order, dated 16.06.2014, passed by Sub Divisional Magistrate, there is no mention that there existed apprehension of breach of peace, mere mentioning that there is



tension between the two parties is not enough finding to infer that there existed apprehension of breach of peace.

13. In my view, in the order, dated 16.06.2014, passed by the Sub Divisional Magistrate cannot be treated to be an order under Section 145 (1) of the Code in the absence of any satisfaction recorded therein that the dispute was such which was likely to cause breach of peace.

14. Coming to the impugned order again, dated 08.08.2014, purportedly passed under Section 146 (1) of the Code, learned Counsel for the petitioner has rightly relied on a decision of this Court, in the case of **Jagdish Kunwar v. The State of Bihar and Another**, reported in **2007 (2) PLJR 574**, to contend that the Magistrate is empowered to attach under Section 146 (1) of the Code when he is satisfied that the case is one of emergency. Paragraph 6 of the said decision, in the case of **Jagdish Kuuwar** (supra), is relevant and is being reproduced herein below:-

“6. In a proceeding under Section 145 Cr.P.C. the Magistrate is empowered to attach under Section 146(1) the disputed property and one of the grounds on which he can attach the disputed property is when he is satisfied that the case is one of emergency. The case of emergency



contemplated under Section 146 has to be distinguished from a mere apprehension of breach of peace and to make out a case for emergency there must be some material before the Magistrate. He would not act under this section upon his personal impression. The provision can be invoked only in cases where the Magistrate finds that but for attachment of the disputed property, the breach of peace is imminent.”

15. Same view has been taken by this Court, in the case of **Ram Swarup Prasad v. The State of Bihar and Others**, reported in **2008 (3) PLJR 604**.

16. I do not find any satisfaction recorded in the impugned order, 08.08.2014, that there existed any situation of emergency, which compelled the Sub Divisional Magistrate to exercise power under Section 146 (1) of the Code for attaching the property, in question.

17. Learned Counsel appearing on behalf of the Opposite Party No. 2 has placed reliance on Supreme Court’s decision, in the case of **Mathuralal v. Bhanwarlal and Another (AIR 1980 SC 242)**, and has contended that since there existed apprehension of breach of peace, the Magistrate has rightly exercised power under Section 146 (1) of the Code.



He has submitted that since the dispute between the parties was incapable of being decided by the Magistrate, and there existed emergency like situation, the Magistrate has rightly invoked the provisions of Section 146 (1) of the Code.

18. Whereas there cannot be any quibble over the legal proposition that if the Magistrate is of the opinion, after having made an order, under Section 145 (1) of the Code, that dispute between the parties as to who is in actual possession over the land cannot be decided by the Magistrate, the Magistrate may attach the property and appoint a Receiver till the dispute between the parties is decided by a court of competent jurisdiction. However, in my view, such power can be exercised only if there exists a situation of emergency. Where the Magistrate, after coming to a conclusion that there exists apprehension of breach of peace, the case being one of emergency, an order under Section 146 (1) of the Code can be made.

19. However, in the impugned order, I do not find any satisfaction recorded by the Sub Divisional Magistrate to the aforesaid effect.

20. As has already been noticed, there is nothing on record to show that the Magistrate has, subsequently,



reconsidered the matter for the purpose of applying proviso to Section 146 (1) of the Code.

21. Accordingly, this application is allowed, and the impugned order, dated 08.08.2014, passed, in Case No. 40(M)/14, by the Sub Divisional Magistrate, Chakia, East Champaran, is set aside.

22. It is, however, made clear that the Sub Divisional Magistrate, Chakia, East Champaran, may initiated further proceeding under provisions of the Code in accordance with law afresh, if situation so warrants.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
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