

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29085 of 2011

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1. Sadan Mahto S/O Late Shankar Mahto R/O Vill. Gaur Bujurg, P.S. G.B. Nagar, Distt. Siwan
 2. Nagina S/O Late Jagdew Mahto R/O Vill. Gaur Bujurg, P.S. G.B. Nagar, Distt. Siwan
 3. Lal Babu Mahto S/O Late Ramnath Mahto R/O Vill. Gaur Bujurg, P.S. G.B. Nagar, Distt. Siwan
 4. Dev Mahto S/O Late Bishun Mahto R/O Vill. Gaur Bujurg, P.S. G.B. Nagar, Distt. Siwan

.... Petitioners

Versus

1. The State Of Bihar
2. Chandeshwar Singh S/O Late Bhulan Singh R/O Vill. Bajrahia, P.S. G.B. Nagar, Distt. Siwan

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Akhileshwar Kumar Srivastava, Adv.

For the Opposite Party No.2 : Mr. Akhilesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-10-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C has been filed to quash the entire proceeding arising out of Case No.M850 of 2007(Trial No.231 of 2011) pending in the Court of Executive Magistrate, Maharajganj whereunder the learned Magistrate initiated a proceeding under Section 145 of the Cr.P.C. and also attached the land in question under Section 146(1) of Cr.P.C. vide order dated 14.09.2007 and 12.06.2009 respectively. The petitioners have further prayed to quash the order dated 25.05.2011 passed by learned Additional District & Sessions Judge, FTC-V,



Siwan in Cr.Revision No.255 of 2009 whereunder the learned Additional Sessions Judge affirmed the order dated 14.09.2007 and 12.06.2009 passed by learned Executive Magistrate.

2. Heard the learned counsel for the petitioners, learned Additional PP for the State as well as learned counsel for the Opposite Party No.2.

3. The facts in brief is that a proceeding under Section 144 of the Cr.P.C. was initiated over seven bighas, nine kathas and fourteen dhurs land against the petitioners and Opposite Party No.2. The petitioners were second party before the court below. The said proceeding under Section 144 Cr.P.C. terminated on account of passing over of statutory period of two months as per order dated 13.09.2007. The Opposite Party No.2 filed petition before SDO, Maharajganj on 13.07.2007 on the basis of which a fresh proceeding under Section 145 Cr.P.C. was initiated. The Opposite Party No.2 filed a petition on 14.09.2007 for the attachment of said property. The said petition after hearing both the parties was rejected on 20.08.2008. The petitioners filed a petition under Section 145(5) of the Cr.P.C. on 23.07.2008 for dropping the said proceeding which after hearing was rejected on 11.12.2008. The Opposite Party No.2 again filed a petition under Section 146(1) of the Cr.P.C. on 13.03.2009 and the learned Magistrate called for a report. After receipt of report, the SDO



allowed the petition and attached the landed property as per order dated 12.06.2009. The petitioners challenged the order dated 14.09.2007 wherein a proceeding under Section 145 Cr.P.C. was initiated. The said criminal revision no.255 of 2009 after hearing was dismissed as per order dated 25.05.2011.

4. From the submissions of both the parties and documents on record, it appears that the land in question stands recorded in the name of ancestor of Opposite Party No.2. The Jamabandi with respect to said land also stands recorded in the name of Opposite Party No.2. The Opposite Party No.2 are residing at different place. The land in dispute lie in the village of the petitioners. It has been alleged that the petitioners have no right title or possession over the said land. They forcibly wanted to grab the landed property of Opposite Party No.2 for which the proceeding under Section 144 of the Cr.P.C. and subsequently by different order a proceeding under Section 145 Cr.P.C. was initiated. As against this and petitioners claim the said land by virtue of registered Patta executed by the ancestor of the Opposite Party No.2. The petitioners neither disclosed the date of their Patta nor the name of ancestor who allegedly executed the Patta in their favour. The learned SDM on being satisfied has initiated the proceedings under Section 145 of the Cr.P.C. against both the parties. The learned SDM considered the report of police and attached the



land under Section 146(1) of the Cr.P.C. and appointed concerned police inspector as receiver till adjudication of dispute by competent civil court.

5. It is essential that before exercising jurisdiction, the Magistrate should be satisfied either from police report or from other information which would include the application filed by the party that there is a likelihood of breach of peace. The question whether on the materials on record, he should initiate the proceeding or not, is his discretion. The law on this point is well settled that when the Magistrate records his satisfaction as to existence of breach of peace in his preliminary order, the High Court or the Sessions Judge cannot go into the sufficiency or otherwise of the material on which the Magistrate's satisfaction is based. It has to be kept in mind that the action under this Section is purely preventive and provisional in nature. The purpose is to ward off commission of breach of peace.

6. From perusal of impugned order dated 12.06.2009, it appears that the learned SDM after hearing both sides and considering the mutation order refusing to mutate the name of petitioners in revenue record on the basis of alleged Patta and also the police report, came to conclusion that the prevailing situation was emergent one and so he attached the land under Section 146(1) of the Code and appointed Police Inspector, Maharajganj to main peace till the



decision of the competent Court.

7. The petitioners challenged the order of initiation of proceeding under Section 145 of the Cr.P.C. before Sessions Judge, Siwan by filing Cr.Revision No.255 of 2009. The learned Additional Sessions Judge as per order dated 25.05.2011 has considered the rival submissions of both the parties and dismissed the revision holding that it was/is domain of Magistrate and also to his satisfaction to initiate proceeding.

8. In view of above discussions, I do not find any merit in this application and the same is dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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