

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35410 of 2016

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

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Umesh Sao son of Dukhan Sao, resident of village- Shivgarh, P.S.- Vikram, P.O.-
Datiyana, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Ram Pyari Devi wife of Rajdeo Sao @ Laddu Sao, resident of village- Shivgarh,
P.O. Datiyana, P.S.- Vikram, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the Opposite Party No.2 : Mrs. Rita Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-08-2017

The object of Section 145 of the Code of Criminal Procedure (for short 'CrPC') is merely to maintain law and order and to prevent a breach of peace by maintaining one or other of the parties in possession, until the actual determination of right of one of the parties by a civil court. While exercising the powers under Section 145 of the CrPC, the Executive Magistrates are supposed to carefully see that the criminal courts are not used by the parties for settlement of civil dispute. Further, in order to initiate a proceeding under Section 145 of the CrPC, existence of the following three pre-requisites are essential:

- (i) there must be a breach of peace inviting such proceeding,
- (ii) there must be materials on record to prove the actual breach of peace and
- (iii) the Executive Magistrate must form subjective



satisfaction to initiate such proceeding.

2. In the present case, the petitioner has challenged the order dated 19.06.2015 passed by the learned Additional District and Session Judge-IV, Patna in Cr. Revision No.543 of 2013 by which the learned Additional District and Sessions Judge has set aside the order dated 25.04.2013 passed by the learned Executive Magistrate, Paliganj in Case No.364(M) of 2008 by which possession of the petitioner had been declared in his favour of the disputed land.

3. After hearing the learned counsel for the petitioner and perusing the record, I find that before initiating a proceeding under Section 145 of the CrPC the Executive Magistrate had not recorded his subjective satisfaction that there was apprehension of breach of peace relating to land for initiating such proceeding.

4. In that view of the matter, if the revisional court has set aside the order passed by the Executive Magistrate, I see no illegality in the order impugned dated 19.06.2015.

5. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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