

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48256 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

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1. Shakil Ahmad @ Md. Shakil S/o Late Jamil Ahmad R/o Magarhatta, P.S. Town (Hazipur), P.O. Hazipur, District Vaishali.
2. Md. Fakruddin @ Pinku S/o Late Zainuddin R/o Bagmati, P.S. Town (Hazipur), P.O. Hazipur, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dr. Shahjahan Sayeed S/o Late Dr. Md. Abu Sayeed R/o Bagmati, P.S. Town Hazipur, District Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Sudha Ambastha, Adv.
Mr. Anisur Rahman, Adv.
For the Opposite Party no.1 : Mr. Satyendra Narayan Singh, APP
For the Opposite Party no.2 : Mr. Vishwa Nath Choudhary, Adv.
Mr. Rajesh Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 20-12-2017

Heard learned counsel for the petitioners and learned counsel representing the opposite party no.2 as well learned APP for the State.

Petitioners are aggrieved by the order dated 30.04.2014 passed by learned Sessions Judge, Vaishali at Hajipur by which he has refused to interfere with the order dated 25.05.2013 passed by learned SDM, Hajipur in Case No. MI-421 of 2013. By the order dated 25.05.2013, the learned SDM converted the proceeding under Section 144 Cr.P.C. to a proceeding under Section 145 Cr.P.C. against both parties.



From the narration of the facts emerging from the records it appears that on the basis of a police report dated 20th March, 2013, the learned SDM, Vaishali at Hajipur initiated a proceeding under Section 144 Cr.P.C. on 25.03.2013 in respect of a land in dispute. Both the parties contested the proceeding by filing show cause and thereafter impugned order has been passed on 25.05.2013 by the learned SDM converting the proceeding under Section 145 Cr.P.C.

Learned counsel for the petitioners submits that the order converting the proceeding under Section 145 Cr.P.C. is bad in law because it has been passed on 61st day from the date the prohibitory order was passed. He would further submit that since the subject matter in dispute is a residential house, therefore, no proceeding under Section 145 Cr.P.C. could have been initiated. Thus, learned counsel submits that the impugned order dated 25.05.2013 passed by the learned SDM, Hajipur as well as the revisional order dated 30.04.2014 passed by learned Sessions Judge, Vaishali at Hajipur are liable to be set aside.

Learned counsel for the petitioners has relied upon a judgment of this Court in the case of **Maula Bux Ansari & Ors. Vs. Ram Rup Sah @ Ram Swaroop Sah reported in 1983 (31) BLJR365 (H.C.)** and submits that in this case it has been held by the High Court that period of sixty days is prescribed for initiation of a proceeding under Section 145 Cr.P.C. from the date on which the



prohibitory order was passed and because in this case proceeding has been initiated beyond the period of sixty days, therefore, it is directly hit by the judgment of this Court.

On the other hand, learned counsel representing the opposite party no.2 submits that a bare perusal of the provision as contained under Section 144(4) Cr.P.C. would show that no order under this section shall remain in force for more than 'two months' (emphasis supplied) from the making thereof. Therefore, the real question for consideration in the case is as to whether the word 'two months' would mean sixty days or it should be two months as per the British calendar. Learned counsel submits that so far as the judgment of the Patna High Court is concerned there is no quarrel with the propositions laid down in the said judgment. It is pointed out that in the said case the real issue in controversy was as to what will be taken as date of initiation of a second proceeding under Section 144 Cr.P.C., whether the date of application or the date on which prohibitory order was passed? The said judgment does not address the issue raised herein. Thus, the said judgment is not on the issue involved in the present case.

Learned counsel relies upon a judgment of the Hon'ble Orissa High Court in the case of **Chhatar Singh & Ors. Vs. Subash Chandra Panda reported in 1994 II OLR 639** where this issue had fallen for consideration. The discussions made in paragraph 3 of the



said judgment has been read out by learned counsel for the opposite party no.2 and the same being worth consideration and has a persuasive value for this Court, are being quoted hereunder for a ready reference:-

“The expression of the word ‘month’ has not been defined in the Cr.P.C. Therefore, the problem has surfaced. Clause (35) of Section 3 of the General Clauses Act, 1897 defines ‘month’ to mean a month reckoned according to the British Calendar. Section 49 of the Indian Penal Code, 1860 (in short, ‘IPC’) also throws some light on the controversy. It reads as follows:

“49. wherever the word ‘year’ or the word ‘month’ is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.”

It is of paramount importance to take note of Clause (v) of Section 2, Cr PC. It has been specifically prescribed that words and expressions used in the Cr PC and not defined but defined in the IPC have the meanings respectively assigned to them in IPC. The expression 'month' in different statutes does not necessarily mean 'thirty days', but goes according to the Gregorian calendar unless the context otherwise requires. The definition given in the General Clauses Act, 1897 applies to all Central Acts passed after the commencement of the General Clauses Act. The word 'month' in its ordinary acceptance means a 'calendar month' and not a lunar month. In Iyer's Law Lexicon it has been stated that the term 'month' whether employed in modern statutes or contracts and not appearing to have been used in a different sense, denotes a period terminating with the day of the succeeding month numerically corresponding to the day of its beginning less one. If there be no corresponding day of the succeeding month, it terminates with the last day thereof. According to Oxford Dictionary, 'month' is a "A space of time reckoned from any moment, and either extending to the corresponding day of the next calendar 'month' (in which case space of time is called a 'calendar



month') or containing 28 days (often miscalled a lunar month). It is of relevance, to note that the legislature in the Cr PC itself has indicated both days and months in different provisions. For example, in proviso to Sub-section (2) of Section 394 'thirty days' has been prescribed. That relates to abatement of appeals. But in the matter of filing of appeals also a distinction has been made between months and particular number of days. Sub-section (5) of Section 378 is illustrative. While it prescribes period of "six months" for grant of special leave in case the complainant is a public servant", "sixty days" is provided for other cases. Had the legislature 'intended to equate two months as sixty days, there was no necessity for using different expressions in different places, i. e. two months in Section 144 and sixty days in Sub-section (5) of Section 378. This is clearly indicative of the legislative intention that whenever number of days was intended to be used, that has been specifically done. Additionally, Section 49, IPC leaves no manner of doubt about the legislative intent. The term "month" as defined therein is in the same terms as defined in the General Clauses Act. The British Calendar is same since 2nd September, 1752, as the Gregorian Calendar. Section 24 of the Indian Limitation Act, 1963 also provides likewise. New Webster's Dictionary defines the word "month" as follows :

"month, month n. (O.E. minath=C month=icel=Goth menothi', month). The period called a 'lunar month of a complete revolution of the moon with regard to some point, usu. The interval from one new moon to the next, called a 'synodical month' and equivalent to 29 days, 12 hours, 44 minutes and 2.7 seconds; the 12th part of a solar year called a 'solar month' any one of the 12 parts, as January, February and so on, into which the calendar year is divided called a 'calendar month'; the time from any day of the calendar month to the corresponding day of the next; a period of four weeks or thirty days."

Learned Additional Sessions Judge was, therefore, justified in his conclusion that the expression 'two months' occurring in Sub-



section (4) of Section 144 does not mean sixty days. It needs to be pointed out that these aspects were not directly under consideration in Hadu Khan and six Ors. v. Mahadav Das and three Ors., 34 (1968) CLT 537, and Nrusingha Charan Panda and two Ors.v. State of Orissa and Anr., 59(1985) CLT 70. In those cases the expression 'sixty days' has been used with reference to Sub-section (4) of Section 144, Cr PC. Since those decisions were not directly concerned with the question now raised for adjudication, it cannot be said that those cases decided that the expression 'two months' means sixty days”.

Having considered the rival submissions made at the bar, I am in agreement with the reasons and rationale provided in the judgment of the Orissa High Court and is persuaded to take a view accordingly. Since in the present case, the prohibitory order was passed on 25.03.2013 and the order of conversion has been passed on 25.05.2013, therefore it is within two calendar months. I agree that the expression two months occurring in sub-section (4) of Section 144 Cr.P.C. does not mean sixty days, thus, I am of the considered opinion that no illegality or infirmity may be found with the impugned orders. The order of conversion is accordingly upheld. The judgment of our own High Court in the case of Maula Bux Ansari (supra) the question raised was that since sixty days had not expired from the date of the order (11.2.1982) of the earlier proceeding under Section 144 of the code, there could not have been any proceeding under Section 144 Cr.P.C. and that being so initiation of the proceeding under Section 145 of the Code was also not legal. The Court found that the later



proceeding under Section 144 Cr.P.C. will be said to be a proceeding initiated on 24.2.1982 when prohibitory order was passed and not 15.02.1982 when application was filed. Thus, the ratio of that judgment is not an issue in this case.

I am not going into other issues argued by learned counsel for the petitioners at this stage because once it has been found that the proceeding under Section 145 Cr.P.C. cannot be closed on the above ground, the petitioners will have a liberty to take all such pleas which are available to them in the said proceeding before the learned SDM, Vaishali at Hajipur and the learned SDM would be required to pass an appropriate order within the scope and ambit of the provision of Section 145 Cr.P.C.

The application has no merit. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J.)

Arvind/-

AFR/NAFR	AFR
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