

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23977 of 2017

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

=====

Moti Mani Singh Son of Praduman Singh, Resident of Village and P.O.- Bharat Khand Deori, P.S.- Bharat Khand, Parbatte, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ashok Singh,
3. Umesh Singh,
4. Arun Singh,
5. Barun Singh, All Sons of Sita Ram Singh, Resident of Village- Bharat Khand (Deori), P.S. and Post Bharat Khand, Deori, Parbatta in the District of Khagaria.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ashutosh Jha, Advocate.

For the Opposite Party/s : Mr. Md. Arif, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-08-2018

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

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 16.11.2016 passed by the learned Sub-Divisional Executive Magistrate, Gogri in Case No. 907 (M) of 2015 whereby he has dropped the proceeding initiated under Section 145 of the Cr.P.C.

3. It is contended by the learned counsel for the petitioner that while passing the order impugned the learned Magistrate failed to consider that the petitioner as well as his vendor is coming in peaceful possession of the land since last 70 years and all of a sudden



it cannot be said that the said land is *gair majarua aam*. The learned Magistrate also failed to consider that after initiation of proceeding under Section 145 of the Cr.P.C the matter could not have been dropped without deciding the case on its merits. He pleaded that the learned Magistrate failed to appreciate that the petitioner as well as his vendor had already been recognized as raiyat by the ex-landlord as well as by the State of Bihar and, in that circumstance, it could not have been said that the land in question was *gair majarua aam*.

4. On the other hand, learned counsel appearing for the State submitted that in a proceeding under Section 145 of the Cr.P.C the right, title or possession of the parties are not to be decided. The Magistrate has simply exercised the power vested in him under Section 145 (5) of the Cr.P.C whereby after hearing the parties, he came to the conclusion that there is no requirement of continuing with the proceeding under Section 145 of the Cr.P.C

5. I have heard learned counsel for the parties and carefully perused the record.

6. To initiate a proceeding under Section 145 of the Cr.P.C, three requirements have to be fulfilled:-

1. There must be a real breach of peace inviting such proceeding;
2. There must be material on record to prove that there is actual breach of peace; and



3. The Executive Magistrate shall form satisfaction to initiate such a proceeding.

7. However, sub-clause (5) of Section 145 of the Cr.P.C empowers the Magistrate that if he is satisfied that no dispute exists, he can drop the proceeding. The essence and basis of the jurisdiction under Section 145 of the Cr.P.C depends upon there being a dispute likely to create breach of peace. When it is shown that there is no such dispute, the Magistrate must hold the hands and not proceed further. In that view of the matter, if at a subsequent stage, the Magistrate formed an opinion that there exists no breach of peace and decided to drop the proceeding, no legality can be found with the order impugned especially in view of the fact that a proceeding under Section 145 of the Cr.P.C is not a substitute to a civil proceeding under which a right, title or claim of a party can be adjudicated.

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

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09-08-2018
Transmission Date	09-08-2018

