

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43510 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Shamshul Hoda Ansari

2. Naimul Hoda Ansari

Both sons of late Ish Mohammad Miyan, resident of village Basantpur, P.S. Mainatand, Distt. West Champaran at Bettiah.

.... Petitioner/s

Versus

1. The State of Bihar

2. Saimul Hoda Ansari

3. Nisar Ahmad Ansari

Both sons of late Shamshul Nain Ansari

4. Kusumtara Khatoon, daughter of late Shamshul Nain Ansari

5. Wakil Miyan

6. Mostt. Mazlooma Khatoon, daughter of late Rahmatullah Miyan

7. Anarul Miyan, son of late Ramzan Miyan

8. Luqman Miyan, son of late Malguzar Miyan

9. Jamil Hoda, son of late Dildar Miyan

All residents of village Rakhahi, P.S. Mainatand, Distt. West Champaran at Bettiah.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Syed Maslehuddin Ashraf, Advocate.

For the opposite party No.2 : Mr. Bimlesh Kumar Pandey, Advocate.

For the Opposite Party/s : Mr. R.P.S. Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 25-06-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 24.07.2013 passed by the learned Sub Divisional Magistrate, Narkatiyaganj, in Case No. 1018 of 2013 by which the learned Magistrate has directed to initiate proceeding under Section 145 Cr. P.C. against the parties on report of Officer-in-Charge, Mainatand Police Station and further directed to issue notice to the parties to file show cause in the matter.



2. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and the State.

3. Learned counsel for the petitioners has submitted that Title Suit No. 315 of 2013 is pending between the parties. Therefore, the continuance of proceeding under Section 145 Cr. P.C. is bad in law. He has relied upon a decision reported in **2007 (2) PLJR 110 (Pramod Shankar Verma Vrs. The State of Bihar & Another)** in support of his aforesaid submission.

4. Learned counsel for the informant has appeared and submitted that proceeding under Section 145 Cr. P.C. was initiated by the learned Magistrate after finding that there was apprehension of breach of peace between the parties for possession of land. Thereafter, the petitioners have filed Title Suit No. 315 of 2013 on 07.08.2013. The petitioners have taken the aforesaid point before the learned Magistrate for dropping the proceeding but the same was not accepted by the learned Magistrate and the same was rejected vide order dated 12.11.2013. The petitioners have challenged the order dated 12.11.2013 by filing Cr. Revision No. 250 of 2013 on 21.11.2013 before the learned Sessions Judge which was dismissed as withdrawn by order dated 30.06.2014, copy of which, has been produced on behalf of the informant during hearing of this petition.

5. Learned counsel for the petitioners has submitted



that he has filed Cr. Revision No. 250 of 2013 against the order dated 12.11.2013 passed by the Sub Divisional Magistrate. The said Cr. Revision was dismissed as withdrawn by learned A.D.J.-III by order dated 30.06.2014, Xerox copy of which, has been enclosed as Annexure-5.

6. In this manner, it appears that two orders have been passed by the learned A.D.J. in Cr. Revision No. 250 of 2013.

7. This Court after hearing the parties and looking into the facts and circumstances of the case as well as the materials available on the record finds that proceeding under Section 145 Cr. P.C. was initiated against both the parties by the learned Magistrate on the basis of petition filed by the opposite party No. 2 alleging apprehension of breach of peace between the parties for possession of the land. The learned Magistrate after initiating the proceeding issued notice to both parties to file written statement. Thereafter, the petitioners have filed Title Suit No. 315 of 2013 before the learned Sub Judge, West Champaran, on 07.08.2013. The petitioners have taken the point of pendency of Title Suit No. 315 of 2013 between the parties, before the Sub Judge, 1st, Bettiah, West Champaran, in his written statement.

8. The learned Magistrate has after hearing both the parties and looking into the written statement filed by the parties has



rejected the petition filed by the petitioners for dropping the proceeding under Section 145 Cr. P.C. on the ground that Title Suit is pending between the parties, and has ordered to attach the property, under Section 146(1) Cr. P.C., and has appointed Circle Officer, Mainatand, as receiver of the property.

9. This Court has held in several decisions that in the event Title Suit is pending between the parties, the findings given in the Title Suit will be binding on the executive court. It has also been held by this Hon'ble Court in several Judgments that when Title Suit is pending between the parties, in that event parallel Proceeding under Section 145 Cr. P.C. will be merely multiplicity of the proceeding and sheer wastage of time between the parties.

10. Learned counsel for the informant has relied upon a decision of this Court passed in Cr. Misc. 24154 of 2000 vide order dated 10.07.2002 whereby this Court has held that proceeding under Section 145 Cr. P.C. certainly can be closed down, if the civil court passes any order in the present matter. In absence of any interim order by the civil court, the Magistrate certainly can proceed with the matter.

11. In the instant case, it is apparent that petitioners after filing of the Title Suit has not moved before the competent civil court to grant interim relief for possession of property in dispute or



against passing of the order by the learned Magistrate for attachment of property under Section 146 (1) Cr. P.C.

12. Section 145 Cr. P.C. empowers the learned Magistrate to initiate proceeding in the event there is apprehension of breach of peace between the parties for possession of the property in question. During pendency of 145 proceeding, to maintain peace, the learned Magistrate is also competent to pass appropriate order for attachment of property under Section 146 (1) Cr. P.C.

13. Provision of 146 (1) Cr. P.C. itself provides that order for attachment of property can be withdrawn at any time if the learned Magistrate is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of the dispute.

14. Therefore, at this stage, this Court is not inclined to interfere with the impugned order passed by the court below.

15. The court below is directed to conclude the proceeding under Section 145 Cr. P.C. within a period of six months from the date of receipt of this order after following the provision of Section 145 (4) Cr. P.C.

16. The petitioners are given liberty to file necessary petition before the learned Magistrate for release of the property from attachment and the court below will pass appropriate order on that petition in the event there is no any apprehension of breach of peace



with respect to the aforesaid subject of dispute and in no event the proceeding under Section 145 Cr. P.C. will remain pending before the learned Magistrate for more than six months from the date of receipt of this order. The petitioners are also given liberty to file appropriate petition in Title Suit for passing appropriate order by the civil court with respect to protection of property as the learned Magistrate has passed order of attachment under Section 146 (1) Cr. P.C. with regard to the aforesaid property and appointed Circle Officer as receiver.

17. The learned Magistrate will pass final order under Section 145 Cr. P.C. within the period as ordered above. The learned Magistrate will also consider that Title Suit is pending between the parties and there is consistent view of this Court as well as Hon’ble Apex Court that during pendency of Title Suit, the pendency of Proceeding under Section 145 Cr. P.C. before the executive court will be only multiplicity of the proceeding and wastage of time between the parties.

18. This Criminal Miscellaneous application is accordingly disposed off.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	06/07/2018
Transmission Date	06/07/2018

