

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22605 of 2017

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Jugal Kishore Prasad @ Jugal Prasad Sonar @ Jugal Prasad, son of Late Laxmi Ram @ Laxmi Gold Smith, resident of Mohalla-Magarwa Pipal, P.S.- Siwan Town, District- Siwan (Shanti Bat Briksh Station Road, Siwan).

.... Petitioner

Versus

1. The State of Bihar.
2. Braj Kishore Yadav, son of Yamuna Yadav, resident of Gudri Hatha, P.S.- Siswan (Siwan), District- Siwan.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Sanjay Kumar Tiwary 1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-01-2018

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 22.08.2016 by which the learned Sub Divisional Magistrate, Siwan Sadar has dropped the proceeding under sub-section (5) of section 145 of the Cr. P.C. in Case No.M1902 of 2016.

2. It is submitted by the learned counsel for the petitioner that though the petitioner produced all the documents relating to the land in question, but the Sub Divisional Magistrate disbelieved the same and dropped the proceeding under section 145 of the Cr. P.C. and left it open to the parties to approach the civil court by way of filing suit. He submitted that the law provides that if



civil suit is pending over the land in question then only a proceeding under sections 144 or 145 of the Cr. P.C. cannot be initiated. However, in absence of any civil suit between the parties relating to the land in question, the order impugned whereby the learned Sub Divisional Magistrate cancelled the proceeding initiated under section 145(1) of the Cr. P.C. is erroneous in law.

3. On the other hand, learned counsel for the State submitted that in absence of any apprehension of breach of peace, the Sub Divisional Magistrate would be justified in cancelling the preliminary order passed under section 145(1) of the Cr. P.C. He submitted that simply because the petitioner claims right over the property in question, if the nature of dispute is not as contemplated under section 145 of the Cr. P.C., the Magistrate would be justified in terminating the proceeding in exercise of power under section 145(5) of the Cr. P.C.

4. I have heard learned counsel for the petitioner and perused the record.

5. It is true that initially on the basis of police report a proceeding was initiated by the Sub Divisional Magistrate under sub-section (1) of section 145 of the Cr. P.C., but after hearing the parties and perusing the document, if the Magistrate came to the conclusion that there was no apprehension of breach of peace, he



would be justified in terminating the proceeding in exercise of power under sub-section (5) of Section 145 of the Cr. P.C.

6. It would be manifest from perusal of the record that initially a proceeding under section 144 of the Cr. P.C. was initiated in respect of two plots situated in mohalla-Dakhin Tola, P.S. & Dist.-Siwan bearing Khata No.1348, Survey No.2656 and Khata No.1983, Survey No.2528 admeasuring 16 katha 8 dhoor and 5 katha 8 dhoor respectively by the Sub Divisional Magistrate, Siwan on 05.03.2006 and the parties were restrained from going over the disputed plots. However, subsequently, after perusal of the show cause and after hearing the parties vide order dated 26.04.2016, the restraint order was vacated against the opposite party no.2, but it was made absolute against the petitioner. The said order was never challenged before this Court. Subsequently, on the application filed by the petitioner, a police report was called for and after perusal of the police report, the Sub Divisional Magistrate, Siwan Sadar initiated a proceeding under Section 145 of the Cr. P.C. vide order dated 18.07.2016, which has been finally terminated by the Sub Divisional Magistrate vide impugned order dated 22.08.2016 in exercise of power under sub-section (5) of section 145 of the Cr. P.C.

7. The principal object of section 145 of the Cr.



P.C. is to preserve the peace and not to determine the rights and title of parties. The inquiry under section 145 of the Cr. P.C. is confined to the question of actual possession only. Further, it is essential for the assumption of jurisdiction by the Magistrate that he should be satisfied from a police report or from other information, which would include an application by the party dispossessed that there is likelihood of a breach of peace.

8. As no illegality has been pointed out by the petitioner in the order impugned and the order passed by the Sub Divisional Magistrate is not without jurisdiction, the instant application being devoid of any merit is dismissed.

9. However, before I part with I must observe that any order passed by the Sub Divisional Magistrate in exercise of power under section 144 of the Cr. P.C. shall not remain in force for more than two months from the date of its making in view of the provision prescribed under sub-section (4) of section 144 of the Cr. P.C.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.02.2018
Transmission Date	03.02.2018

