

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1720 of 2016

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1. Jahur Alam S/o Nur Islam
2. Anisur Rahman S/o Nur Islam
3. Unsahak S/o Nur Islam
4. Nur Islam S/o Late Afzal Hussain @ Late Tafjal Hussain
5. Nazir Hussain S/o Danish
6. Wazir Hussain S/o Danish
7. Danish S/o Late Tafjul Hussain All resident of Village- Chilhanian, P.S.- Amdabad, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jalaluddin S/o Late Saidur Rahman, Resident of Village- Chilhanian, P.S.- Amdabad, District- Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Ataur Rahman
For the Opposite Party/s : Mr. Narendra Kr.Singh(App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

5 11-09-2018 Heard the learned counsel for the petitioners as well as the State.

The petitioners seek quashing of order dated 22.04.2015 passed by the learned S.D.M., Manihari, Katihar in Case No. 32(M)/2014-15, whereby the court below has attached the property in dispute and further quashing of order dated 07.10.2015 passed by learned Sessions Judge, Katihar in Cr. Rev. No. 53/2015, whereby the revisional court has dismissed the said revision petition filed against the order dated 22.04.2015 in Case No. 32(M)/2014-15.



Learned counsel for the petitioners has submitted that order of attachment of property was passed without converting the proceeding under Section 144 Cr.P.C. into Section 145 Cr.P.C. It is further submitted that Title Suit No. 219 of 2013 is pending between the parties but still the court below has initiated the proceeding. He has further submitted that proceeding under Section 144 Cr.P.C. has been initiated by the learned Magistrate on the basis of report submitted by police.

Learned counsel for O.P. No. 2 has submitted that property has been attached under Section 146(i) Cr.P.C. in Case No. 32(M)/2014-15 vide order dated 22.04.2015 passed by learned S.D.M., Manihari, Katihar, which has been annexed as Annexure-4 to the petition.

From perusal of aforesaid order of learned S.D.M., Manihari passed in Case No. 32(M)/2014-15, it appears that order of attachment was passed under Section 146 (i) of the Cr.P.C.

Learned counsel for the petitioners has submitted that proceeding under Section 144 Cr.P.C. was initiated on 01.08.2014 and thereafter by order dated 22.04.2015 property was attached under Section 146(i) Cr.P.C., which is not permissible in law.

From perusal of Annexure 4 and 5, it appears that no



proceeding under Section 145 Cr.P.C. was initiated. The order of attachment had been passed by the learned Magistrate in proceeding under Section 144 Cr.P.C.

In view of such, the order dated 22.04.2015 passed by the learned Magistrate is not in accordance with law. Therefore, order dated 22.04.2015 passed by learned S.D.M., Mahihari, Katihar in Case No. 32(M)/2014-15 and order dated 07.10.2015 passed by learned Sessions Judge, Katihar in Cr. Rev. No. 53/2015 are hereby quashed.

The criminal miscellaneous is accordingly allowed.

(Sanjay Priya, J.)

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