

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36255 of 2013

Arising Out of PS.Case No. -156 Year- 2012 Thana -COMPLAINT CASE District- LAKHISARAI

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Ram Pravesh Singh son of Late Bishundeo Singh, resident of village- Khutaha Dih,
Police Station- Barahiya, District- Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Bipin Singh son of Bisheshwar Singh,
 3. Pramod Kumar Singh son of Sri Ramchandra Singh,
 4. Ramchandra Prasad Singh son of Late Kedar Pd. Singh,
 5. Lalan Singh son of Sri Shyam Sundar Singh,
- All are resident of village- Khutaha Dih, P.S. Barahiya, District Lakhisarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Advocate

For the Opposite Party/s : Mr. Onkar Nath, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 04-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 25.02.2013 passed by the learned Sessions Judge, Munger in Cr.Revision No.07 of 2013 whereby the revision application filed against the order dated 07.11.2012 passed by the learned Sub Divisional Magistrate, Lakhisarai in Miscellaneous Case No. 156M of 2012 by which the proceeding under Section 145 of the Cr.P.C. was initiated and notice was issued to the petitioner has been rejected.

2. Learned counsel for the petitioner submitted that the



revisional court erred in law in dismissing the revision application. He submitted that the order initiating a proceeding under Section 145 of the Cr.P.C. was passed without there being any subjective satisfaction of the learned Magistrate regarding apprehension of breach of peace and, thus, the revisional court ought to have interfered with the impugned order dated 07.11.2012 passed by the learned Magistrate.

3. On the other hand, learned counsel appearing for the opposite party no.2 submitted that the disputed land was purchased by the opposite parties by way of registered sale deed and the opposite parties were coming in peaceful possession over the same, but the petitioner was trying to forcibly occupy the land of the opposite parties. He submitted that though notice was issued to the petitioner, he failed to appear and, thus, the learned Sub Divisional Magistrate, Lakhisarai rightly came to the conclusion that the petitioner was not a law abiding citizen and that there was apprehension of breach of peace. He contended that since there was no illegality or irregularity in initiating a proceeding under Section 145 of the Cr.P.C., no error can be found with the revisional order passed by the learned Sessions Judge, Munger in Cr.Revision No.07 of 2013.

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

5. To initiate proceedings under Section 145 of the Cr.P.C.,



three requirements have to be fulfilled:-

- (i) There must be a real breach of peace inviting such proceedings ;
- (ii) There must be material on record to prove the actual breach of peace; and
- (iii)The Magistrate shall form a subjective satisfaction to initiate such proceedings.

6. Furthermore, before initiating a proceeding under Section 145 of the Cr.P.C. the Executive Magistrate is required to be careful to see that the criminal courts are not used by the parties for settlement of civil dispute for establishing possession of the property in dispute as the object of Section 145 of the Cr.P.C is merely to prevent a breach of peace by maintaining one or other of the parties in possession in case of actual apprehension of breach of peace.

7. From perusal of the impugned order dated 07.11.2012 passed by the learned Sub Divisional Magistrate it appears that the learned Sub Divisional Magistrate had not formed any subjective satisfaction that there was a real breach of peace inviting such proceeding. In absence of subjective satisfaction, the order dated 07.11.2012 passed by the learned Sub Divisional Magistrate, Lakhisarai ought not to have been upheld by the revisional court.

8. In that view of the matter, the impugned order dated 25.02.2013 passed by the learned Sessions Judge, Munger in Criminal Revision No.07 of 2013 and the order dated 07.11.2012 passed by the



learned Sub Divisional Magistrate, Lakhisarai in Miscellaneous Case No.156M of 2012 are set aside.

9. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.01.2018
Transmission Date	08.01.2018

