

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14622 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

Prakash Kumar Singh @ Prakash Kumar Son of Late Anand Kumar Singh
Resident of Village- Mokhtarpur, P.O.P.S.- Mahnar, Sub-Division- Mahnar,
District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Pramod Kumar Singh son of Late Kirpa Narain Singh
3. Rajesh Kumar Singh Son of late Sadanand Singh Both are resident of Village- Mokhtarpur, P.O.P.S- Mahnar, District-Vaishali.
4. Smt. Nira Devi wife of Late Anand Singh Both are resident of Village- Mokhtarpur, P.O.P.S- Mahnar, District-Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar

For the Opposite Party/s : Mr.Pushpa Sinha, App

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 21-06-2019 Heard learned counsel for the parties.

2. Against the order of the Sub-Divisional Officer, Manhar, dated 03.09.2013, passed under Section 144 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') converting the said proceeding under Section 147 of the Code, the petitioner had filed a criminal revision application giving rise to Criminal Revision No. 210 of 2014, which has been dismissed by the learned Sessions Judge, Vaishali. The said order dated 17.11.2014 passed by the learned Sessions Judge, Vaishali in Criminal Revision No. 210 of 2014 is under



challenge in the present proceeding under Section 482 of the Code.

3. Learned counsel appearing on behalf of the petitioner has submitted that the Sub-Divisional Officer, while passing the order under Section 144 of the Code and thereby converting into a proceeding under Section 147 of the Code has not taken into account all the material facts and circumstances, which were put forth on behalf of the petitioner. He has contended that the Sub-Divisional Officer in his order dated 03.09.2013, depended completely on the report of the police submitted in the said proceeding and, therefore, the said impugned order dated 03.09.2013 was not sustainable. He has submitted that the learned Sessions Judge, Vaishali has failed to take into account the grounds taken by the petitioner to assail the order of the Sub-Divisional Officer in correct perspective and has wrongly dismissed the revision application.

4. I have perused the order of the Sub-Divisional Officer, Mahnar. He has referred to the police report which indicated that the petitioner was making attempts to obstruct the passage left between two plots in course of partition. The Sub-Divisional Officer, considering the stand taken before him on behalf of the parties in a proceeding under Section 144 of the



Code came to a conclusion that the dispute between the parties likely to cause breach of peace existed regarding right of user of the land in question and accordingly passed the impugned order asking the parties to attend his Court.

5. I am not able to accept the submission made on behalf of the petitioner that it was only the police report which was the basis for Sub-Divisional Officer to pass the order dated 03.09.2013. Further, if the Sub-Divisional Officer relied on police report for forming an opinion as regards existence of dispute likely to cause breach of peace, the said finding cannot be said to be without any basis. A subjective satisfaction of the Magistrate as to the existence of an apprehension of breach of peace is an essential condition for making an order under Section 147 of the Code. In my opinion, refusal by the learned Sessions Judge to interfere with the order of the Sub-Divisional Officer cannot be said to be suffering from any legal infirmity, requiring this Court's interference under Section 482 of the Code.

6. This application has no merit and it is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

arun/-

U			
---	--	--	--

