

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22097 of 2015

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

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Rambha Devi wife of Vijay Kumar Patwa Resident of MOh. Haripur Dhobi
Tola, Ward No. 20, P.S.- Khagaria, Dist.- Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Secretary, Home Department, Govt. Of Bihar,
Patna and Ors
2. The Sub-divisional Magistrate, Khagaria.
3. Salamat Miyan S/o Late doman Miyan, R/o N.A.C. Road Ward No. -11,
P.S.- Khagaria, Dist- Khagaria.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Kumar Binode Bariar
For the Opposite Party/s : Mr.Narsing Tantiapp

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 03-12-2019 This application has been filed for setting aside the order dated 07.08.2013 passed by the learned Sub-Divisional Judicial Magistrate, Khagaria in Case No. 546/2012, by which, he has closed the proceeding under Section 145 Cr.P.C, in which, the petitioner was first party and opposite party no. 2 is the second party and directed the petitioner to move before the civil court of competent jurisdiction for deciding the matter.

Facts in short is that a petition filed by the petitioner before the Sub Divisional Judicial Magistrate, Khagaria, stating therein that she was in peaceful possession over the disputed property but when she went to take bath in



Kumbh, the opposite party locked the house after breaking open the lock of the petitioner and taken over the possession of the house and building.

On the basis of the said petitioner, a proceeding was initiated and notice was issued to opposite party no. 2 and it appears that learned Sub Divisional Judicial Magistrate, Khagaria after hearing the both the parties and after considering the materials available on record, dropped the proceeding and directed the petitioner to move before the competent civil court for deciding the case.

Submission of learned counsel for the petitioner is that once a proceeding was initiated under Section 145 Cr.P.C., the learned Magistrate has to take evidence and decide the possession over the property under Section 144 Cr.P.C. but instead of that he has simply dropped the proceeding, which is not just and proper.

On the other hand, learned counsel appearing on behalf of opposite party no. 2 opposed the application on the ground that there was no material in her petition showing as to when she was dispossessed from the house. Moreover, her admission itself shows that she has been dispossessed from the house and in such a situation, learned Magistrate has rightly



dropped the proceeding as according to petitioner herself she was not in possession of the house.

Heard both sides and perused the impugned order, from which, it appears that the learned Magistrate after considering the fact that there is no material available on record to show that as to when she was dispossessed from the house rather from the materials available on record, two months prior to filing of the petition, she was dispossessed from the house, as such, the learned Magistrate has rightly dropped the proceeding and asked the petitioner to move before the civil court of competent jurisdiction by filing title suit to decide the matter.

In view of the above, I do not find merit in the present application.

Accordingly, this application is disposed of with liberty to the petitioner to move before the competent civil court by filing title suit to decide the issue.

(Vinod Kumar Sinha, J)

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