

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56356 of 2015

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

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1. Syed Rehan Ahmad @ Munna Ahmad son of Late Ghulam Murtaza, resident of Mohalla Quila, Police Station Bettiah, District West Champaran.
 2. Ajay Yadav son of Jagdish Yadav,
 3. Ramji Ram son of Phuleshawar Ram,
 4. Lalan Mahto son of Late Lal Bahadur Mahto,
 5. Umawati Devi wife of Chote Lal Mahto,
 6. Chandeshwar Pandey alias Chandi Pandey son of Jagannath Pandey,
 7. Kanti Pandey son of Jagananth Pandey,
 8. Upendra Sah son of Harpal Sah,
- Nos. 2 to 8 are resident of Village Mitani, Police Station Gaunaha, District West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Sub Divisional Magistrate, Narkatiaganj, District West Champaran.
3. The Circle Officer, Gaunaha, District West Champaran.
4. Bikau Mahto alias Vikas Mahto alias Bikku son of Late Lakmi Mahto, resident of Village Mitani, Police Station Belsandi, District West Champaran.
5. The Anchal Adhikari, Gaunaha, Narkatiyaganj, West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Khatim Reza, Advocate
For the State	:	Mr. Akbar Ali, A.P.P.
For the Opposite Party No. 4	:	Mr. Raghunandan Kumar Singh, Advocate Mr. Upadhyay Saurabh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 26-03-2019

Heard learned counsel for the petitioners; learned A.P.P.
for the State and learned counsel for the opposite party no. 4.



2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

“That this application is being filed for quashing of order dated 25.08.2015 passed in Case No. 842 of 2014 (Vikash Mahto @ Bikku Vs. Syed Rehan @ Munna) by the learned Sub-Divisional Magistrate, Narkatiaganj, District West Champaran whereby the learned Magistrate has wrongly exercised the power under Section 146 (1) of the Criminal Procedure Code and has ordered for attachment of disputed land appointing Anchal Adhikari, Gaunaha Block as receiver.”

3. The father of the petitioner no. 1 had filed Title Suit No. 167 of 2000 before the Sub-Judge, Bettiah, West Champaran along with others against the opposite party no. 4 and others for declaration of title and confirmation of possession over various lands including the land in question. The same was decreed ex parte by judgment and order dated 27.05.2003. It appears that the opposite party no. 4, being aggrieved by the same has filed Misc. Case No. 29 of 2011 which is still pending. For the land which is claimed by the opposite party no. 4, initially, a proceeding under Section 144 of the Code, was instituted. The same was converted under Section 145 (1) of the Code and notice was issued to the petitioners who filed their show cause praying that the matter be dropped under Section 145(5) of the Code. The opposite party no.



4 also filed a petition praying that the land be attached under Section 146 (1) of the Code. By a common order dated 25.08.2015, which is impugned herein, the Sub-Divisional Magistrate, Narkatiaganj has rejected the prayer of the petitioners under Section 145 (5) of the Code, whereas he has allowed the petition of the opposite party no. 4 under Section 146 (1) of the Code.

4. Learned counsel for the petitioners submitted that once there is a decree in a civil suit in favour of the petitioners, both with regard to title and possession, the same has to be not only respected by the authorities but also the order has to be implemented and the authorities cannot take the plea of any apprehension of breach of peace to deny the petitioners from enjoying the fruits of such decree. Learned counsel submitted that in Misc. Case No. 29 of 2011, till date there is no order of any injunction so as to give any basis for the authorities to pass such an order. It was submitted that the Courts have consistently held that interference by the criminal Court in such matters, which are to be decided by the Civil Court of competent jurisdiction, especially with regard to title and possession, should not be permitted. Learned counsel drew the attention of the Court to the report submitted by the local police to the Sub-Divisional Magistrate,



Narkatiaganj, in which it has been clearly stated that there is a Miscellaneous Case pending before the Civil Court with regard to the land in question. Learned counsel submitted that in the petition filed by the petitioners before the Sub-Divisional Magistrate, Narkatiaganj, for concluding the proceeding under Section 145 (5) of the Code, all these facts were mentioned, especially with regard to there being a decree of the Civil Court of competent jurisdiction and also the law being settled by the Hon'ble Supreme Court. In this connection, specific reference was made in such application to the decision of the Hon'ble Supreme Court in **Ram Sumer Puri v. State of U.P.** reported as **AIR 1985 SC 472**, where it has been held at paragraph no. 2 that when in a civil litigation the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding under Section 145 of the Code could not be justified. Learned counsel further referred to the decision of the Hon'ble Supreme Court in **Ashok Kumar v. State of Uttarakhand and Ors.** reported as **2012 (8) Supreme 737**, the relevant being at paragraphs no. 14 and 15, for the proposition that a mere case of apprehension of breach of peace could not show that an emergency exists so as to invoke Section 146 (1) of the Code.



5. Learned A.P.P. submitted that though the authority has invoked jurisdiction under Section 146 (1) of the Code, but from the facts and circumstances of the case and the law settled by the Court, such order cannot be sustained.

6. Learned counsel for the opposite party no. 4 fairly submitted before the Court that there is a decree against them in the title suit. However, he submitted that the same was ex parte as no notice was received by them and, thus, they have filed Miscellaneous Case for setting aside the ex parte decree. He further submitted that the case is still pending in which there is no interim order with regard to any injunction.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. From the facts enumerated above, it is clear that in the year 2003 itself there was a decree by a competent Civil Court by which the suit filed by the petitioners had been decreed in their favour with regard to title and possession over various lands, including the land in question, in which the opposite party no. 4 was defendant no. 2. Thus, once there is a decree, even though ex parte, the same would still have the force of law till it is not set aside by the appellate forum or recalled by the Court concerned



itself. Once such fact is admitted and against such judgment and decree there being no order till date, either recalling or modifying or setting aside or even any order for injunction with regard to the land in question, the civil and police authorities of the State cannot take a plea that on mere breach of apprehension they would attach the land in question. Such jurisdiction or power does not vest in them. Moreover, the State cannot take the plea that though in law a party may have all right with regard to a land in question but they would not ensure that such right is enjoyed by them just on the basis of some apprehended breach of peace. Further, with regard to invoking power under Section 146 (1) of the Code, such order has been held to be not permissible in terms of the order of the Hon'ble Supreme Court in **Ashok Kumar** (supra), where at paragraphs no. 13 and 14, it has been held as under:

“13. The ingredients necessary for passing an order under Section 145(1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.



14. We find from this case there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant- Ashok Kumar, whether it is legal or not, is not for the SDM to decide.”

9. Further, the petition under Section 145 (5) of the Code filed by the petitioners before the Sub-Divisional Magistrate, Narkatiaganj for dropping the proceeding was required to be allowed in view of the decision of the Hon’ble Supreme Court in **Ram Sumer Puri** (supra), which has been specifically referred to in the petition filed by the petitioners praying for such closure, wherein at paragraph no. 2 it has been held as under:

“2. Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under S 145, Criminal P.C. (‘Code’ for short), and attachment of the property at the instance of respondents 2-5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No. 87/75 filed in the Court of the Civil Judge at Ballia wherein the question of title was gone into and by judgment dated February 28, 1981, the said suit was dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents 2-5 were the plaintiffs and we gather



from the counter affidavit filed in this Court that an appeal has been carried from the decree of the Civil Judge and the same is still pending disposal before the appellate court. The assertion made in the Petition for Special Leave to the effect that respondents 2 to 5 are close relations has not been seriously challenged in the counter affidavit. When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under S. 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during dependency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under S. 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.”

10. Thus, the Court finds that the petition under Section 145 (5) of the Code filed by the petitioners was required to be allowed and the petition filed by the opposite party no. 4 under



Section 146 (1) of the Code was required to be dismissed by the Sub-Divisional Magistrate, Narkatiaganj and by doing the opposite, he has exceeded the jurisdiction vested in him. Moreover, in the facts and circumstances of the case, mere apprehension of breach of peace would not be a ground for the authorities to abdicate their responsibility under law to ensure that the person who has got a decree of the competent Civil Court in his favour, is allowed to enjoy the fruits of such decree. At this juncture, the Court would observe that if the same is not done, it would be a tool in the hands of unscrupulous elements to circumvent and get over the judgments and decrees passed by the Civil Courts by abusing the process of the Court and filing petitions under Sections 144, 145 and 146 of the Code and this would also give a tool in the hands of unscrupulous authorities to interfere in civil matters where otherwise they have no jurisdiction, and only under the garb of some apprehension with regard to breach of peace, they would get a free hand to pass orders, like in the present case, which the Court finds to be totally arbitrary and unjustified.

11. In the present case, the opposite party no. 4 having not been able to get relief from the Civil Court, has succeeded in getting an order from the Sub-Divisional Magistrate, Narkatiganj,



which besides being totally unwarranted, has also led to a situation where a decree of the Civil Court in favour of the petitioners has, for all practical purposes, been set to naught. This is clearly an abuse of the process of the Court.

12. For reasons aforesaid, the application is allowed. The impugned order dated 25.08.2015 passed in Case No. 842 of 2014 by the Sub-Divisional Magistrate, Narkatiaganj stands quashed. The petition filed by the petitioners under Section 145 (5) of the Code stands allowed. The said case stands consigned and the petition filed under Section 146 (1) of the Code by the opposite party no. 4 before the Sub-Divisional Magistrate, Narkatiaganj stands dismissed.

13. Before parting, the Court would only reiterate that the administrative and police authorities of the State are under a constitutional obligation to ensure that a citizen enjoys his rights, in accordance with law, moreso when a Civil Court of competent jurisdiction has upheld such right in his favour till the time there is no other order of a competent Court with regard to the land in question.

14. The petitioners shall be entitled to receive all the proceeds from the use of the land in question which the receiver may have collected, within one month from the date of production



of a copy of this order before the Sub-Divisional Magistrate,
Narkatiaganj as well as Anchal Adhikari/ Circle Officer, Gaunaha,
who is the receiver of the lands in question.

(Ahsanuddin Amanullah, J)

P. Kumar

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