

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1240 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Saharsa

Rajendra Yadav, Son of Late Pulkit Yadav, Resident of Village- Lokahi, P.S.-
Bihra, District- Saharsa.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Home Department, Bihar, Patna Bihar, Patna.
2. Nunu Tanti, Son of Late Bolat Tanti, Resident of Village- Sattar Kataiya, P.S.- Bihra, District- Saharsa.
3. Guna Tanti, Son of Late Bolat Tanti, Resident of Village- Sattar Kataiya, P.S.- Bihra, District- Saharsa.
4. Makeswar Tanti, Son of Munni Tanti, Resident of Village- Sattar Kataiya, P.S.- Bihra, District- Saharsa.
5. Bavelal Sharma, Son of Late Mungelal Tanti, Resident of Village- Sattar Kataiya, P.S.- Bihra, District- Saharsa.
6. Subelal Sharma Son of Late Mungelal Tanti, Resident of Village- Sattar Kataiya, P.S.- Bihra, District- Saharsa.
7. Nand Lal Sharma, Son of Late Mungelal Tanti, Resident of Village- Sattar Kataiya, P.S.- Bihra, District- Saharsa.
8. Dabe Sharma, Son of Late Mungelal Tanti, Resident of Village- Sattar Kataiya, P.S.- Bihra, District- Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Rashmi Jha, Advocate
For the Respondent/s : Mr. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 28-08-2019

Defect pointed out by the Stamp Reporter is ignored.

2. In the instant application, the prayer of the petitioner is to issue a writ in the nature of mandamus to the learned Sub Divisional Magistrate, Saharsa to comply with the order dated 15.12.2016 passed in Criminal Revision No. 355 of 1994 whereby the order dated 10.07.1992 passed in Misc. Case No.260 of 1977 in a



proceeding under Section 145 of the Code of Criminal Procedure (for short 'CrPC') was set aside and the matter was remitted back to the court of Sub Divisional Magistrate to pass order afresh on the material evidence available on record.

3. It is submitted by the learned counsel for the petitioner that till date no steps have been taken by the learned Sub Divisional Magistrate to hear the matter afresh and deliberately the hearing is being delayed.

4. The brief facts of the case as pleaded by the petitioner are that the Sub Divisional Magistrate, Saharsa had drawn up a proceeding under section 144 CrPC and directed parties to file their show cause. Subsequently, the said proceeding was converted into a proceeding under section 145 CrPC. The proceeding under section 145 was disposed of on 10.07.1992 in favour of O.P. No.2 to 8 by an executive magistrate in whose court the case was transferred. The aforesaid order dated 10.07.1992 was challenged in revision vide Cr. Rev. No.355 of 1995. Vide order dated 10.07.1992, the learned Additional Sessions Judge (F.T.C.-III), Saharsa dismissed the revision application on the point of limitation. The petitioner challenged the revisional application before this Court under section 482 of the CrPC vide Cr. Misc. No.3277 of 2017, which was allowed on 21.11.2014 and the order dated 27.01.2012 was set aside and the matter was remanded back to the High Court for passing out



appropriate order on the merits of the application afresh. Thereafter, on 15.12.2016, a fresh order was passed by the Sessions Judge. The delay in filing the revision was condoned and the order dated 27.01.2012 was set aside and the matter was remitted back to the learned Sub Divisional Magistrate to pass order afresh on material evidence on record.

5. The grievance of the petitioner in the instant case is that no sincere efforts have been taken by the learned SDM, Saharsa to hear the matter afresh and deliberately hearing of the matter is being delayed.

6. Section 145 of the CrPC provides that the Magistrate without reference to the merits of the claims of any of the parties to a right to possess the subject of dispute, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1) of Section 145 of the CrPC was in possession of the subject of the dispute. In case, it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).



7. Apparently, the 144 proceeding was converted into a proceeding under Section 145 CrPC in the year 1977.

8. It is well settled position in law that proceedings under section 145 CrPC are not meant to decide the title or the right to possession of a party. The basic foundation of jurisdiction of Magistrate under Section 145 CrPC is on the apprehension of breach of peace. It provides an expeditious remedy and a procedure suitable for that purpose. The parties have an alternative remedy by way of suit.

9. The supervisory jurisdiction under Article 227 should be exercised sparingly.

10. Keeping in mind the fact that the proceeding under Section 145 was started more than 40 years ago and the petitioner has an alternative remedy of suit, I am not inclined to issue any direction to the learned SDM, Saharsa in the instant matter.

11. The application is disposed of with liberty to the petitioner to avail of the remedy available in a proceeding under the common civil law.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2019
Transmission Date	NA

