

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3635 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

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1. Gopal Singh, Son of Chandra Kishore Singh
2. Raman Singh Son of Chandra Kishore Singh
3. Raj Kishore Singh Son of Yogendra Singh
4. Sanjay Singh Son of Nandan Singh All are Resident of vill-Baghour,P.O-
Mainagram,P.S-Mahishi,Distt.-Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. Pulendra Narayan Singh Son of Jai Narayan Singh Resident of vill-Baghour,P.O-
Mainagram,P.S-Mahishi,Distt.-Saharsa

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranvijay Narain Singh

For the Opposite Party/s : Mr. Harendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-08-2018

Heard the learned counsel for the petitioners as well as
the State.

The present application has been filed for quashing the
order dated 12.12.2014 passed by the learned Additional Sessions
Judge 1st, Saharsa in Cr. Rev. No. 38/2013, by which the Revisional
Court has affirmed the order dated 19.01.2013 passed by the learned
Sub-Divisional Magistrate, Saharsa Sadar in Misc. Case No. 625/2012
and also quashing the order dated 19.01.2013 passed in Misc. Case
No. 625/2012, by which proceeding under Section 144 Cr.P.C. has
been converted into Section 145 Cr.P.C. on the ground that there is



apprehension of breach of peace.

Learned counsel for the petitioners has submitted that during pendency of the proceeding under Section 144 Cr.P.C., a report was called for by the learned S.D.M., Saharsa from the Police Inspector, Sadar Circle, Saharsa who submitted his report dated 02.01.2013 after visiting the spot and examining witnesses stating that petitioners have been cultivating the said land since 1962. The aforesaid land has been cultivated by the petitioners recently also on which wheat and maize crop is sanding. The police Inspector after investigation made specific report that there is no apprehension of breach of peace. The aforesaid report is annexed as Annexure-4 to the petition. The court below without taking into consideration the aforesaid report dated 02.01.2013 has passed the order dated 19.01.2013 converting the proceeding under Section 144 Cr.P.C. into Section 145 Cr.P.C. The Revisional Court has also without looking into the aforesaid report dated 01.01.2013 affirmed the order of the learned S.D.M., Saharsa dated 19.01.2013 passed in Misc. Case No. 625/2012.

This Court finds that initially the proceeding under Section 144 Cr.P.C. was initiated between the parties.

It has been submitted on behalf of the petitioners that petitioners and opposite parties are descendants of their common



ancestors Balajeet Singh. Balajeet Singh has two sons Hridya Narayan Singh and Awadh Narayan Singh. The petitioners belong to the branch of Awadh Narayan Singh whereas Opposite Parties belong to the branch of Hridya Narayan Singh.

O.P. No. 2 and his brothers made application before the S.D.M., Saharsa Sadar for initiation of proceeding under Section 144 Cr.P.C. Learned S.D.M. called a report from Mahishi Police Station. The S.H.O., Mahishi P.S. made his report dated 14.11.2012 without visiting the spot and without examining any person. He made recommendation for initiation of proceeding under Section 144 Cr.P.C. on both the parties and directed to file show cause. The petitioners upon notice appeared and filed their show cause in Misc. Case No. 625/2012 on 29.11.2012 refuting the claim of O.P. No. 2. The petitioners also made serious objections with regard to police report dated 14.11.2012. A copy of the show cause filed on behalf of the petitioners has been enclosed as Annexure-3. Learned S.D.M., Saharsa Sadar then called another report from the Police Inspector, Sadar Circle Saharsa, who submitted his report dated 02.01.2013 after visiting the spot and examining witnesses. The Police Inspector specifically mentioned in the report that the petitioners had been cultivating the land since 1962 and the said land has been cultivated by the petitioners recently also on which wheat and maize crop is



standing and there was no apprehension of breach of peace. Copy of the aforesaid report dated 02.01.2013 is enclosed as Annexure-4.

From the order of the learned Sub Divisional Magistrate dated 19.01.2013, it appears that he has not taken into consideration the aforesaid report of the Police Inspector dated 02.01.2013 and only on the basis of earlier report dated 14.11.2012, which was seriously objected by the petitioners in their show cause has converted the proceeding under Section 144 Cr.P.C. into Section 145 Cr.P.C. The Revisional Court also without looking into the aforesaid report of the Inspector of Police dated 02.01.2013 has affirmed the order dated 19.01.2013 passed by the learned S.D.M., Saharsa Sadar in Misc. Case No. 625/2012. Section 145 Cr.P.C. specifically provides “*that proceeding can be initiated only on serious apprehension of breach of peace between the parties for possession of the land in question*”.

In the instant case, there is specific report of the Police Inspector dated 02.01.2013 that these petitioners had been cultivating the land since 1962 and the said land had been cultivated by the petitioners recently also on which wheat and maize crop is standing. It is also mentioned in the written report that there is no apprehension of breach of peace regarding the same.

In such circumstances, this Court is of the view that both the courts have committed serious illegality in passing order



without looking into the report of the Inspector of Police dated 02.01.2013 that there is no apprehension of breach of peace with respect to the possession of aforesaid land between the parties. The aforesaid land is being cultivated by the petitioners since 1962.

Therefore, the impugned order dated 19.01.2013 passed by the learned Sub Divisional Magistrate, Saharsa Sadar in Misc. Case No. 625/2012 and the order dated 12.12.2014 passed by the learned Additional Sessions Judge 1st, Saharsa in Cr. Rev. No. 38/2013, suffers from illegality. Accordingly, both the aforesaid orders along with the entire proceeding against the petitioners are hereby quashed.

This Criminal Miscellaneous is, accordingly, allowed.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	14.08.2018
Transmission Date	14.08.2018

