

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 39036 of 2007

Madan Mohan Mishra, Son of Brij Nandan Mishra, Resident of Village-
Arjunpur, P.O.- Rajapur, P.S.- Simri (O.P. Ramdas Ke Dera), District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Buxar.
3. The Sub-Divisional Magistrate, Dumraon, Buxar.
4. The Circle Officer, Simri, Sub-division, Dumraon, District-Buxar.
5. The Circle Inspector, Circle Officer Brhampur, District- Buxar.
6. The Superintendent of Police, Buxar.
7. The Officer-in-Charge of Police, Simri, Buxar.
8. Binod Kumar Pathak, Son of Kashinath Pathak, Resident of Village-
Niazipur, P.S.- Simri, Buxar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Nil Kamal, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No. 3	:	Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates
For the Opposite Party No. 8	:	Mr. A. K. Pathak. Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 12-04-2019

Heard learned counsel for the petitioner; learned APP
for the State; learned counsel for the opposite party no. 8 and Mr.
Amit Shrivastava, learned counsel appearing for the opposite party
no. 3 (Sub-Divisional Magistrate, Dumraon, Buxar).

2. Pursuant to order dated 26.03.2019, the opposite party
no. 3 is present and has also filed show cause.



3. Upon hearing Mr. Amit Shrivastava, learned counsel appearing for the opposite party no. 3 in the matter of Rule of Contempt issued against him and going through the averments made in the show cause, the Court finds that there is no deliberate or willful laches on his part for non compliance of the earlier orders of the Court, both for filing counter affidavit as also for his non appearance. However, there was an order, which was not complied, but taking into consideration the unqualified and unconditional apology tendered, the Court is inclined to accept the same. Accordingly, Rule in the matter of contempt issued against the opposite party no. 3 and the warrant of arrest issued against him stand withdrawn. The issue stands consigned. The personal appearance of the opposite party no. 3 also stands dispensed with.

4. Coming on the merits, the petitioner has moved the Court under Section 428 of the Code of Criminal Procedure, 1973 for the following relief:

“That this application is being filed on behalf of the abovenamed petitioner for quashing the impugned order dated 24.07.07 passed in Case No. 434 (M) 07 by Learned Sub-Divisional Magistrate, Dumraon (Opposite Party No. 3) Impugned order to this petition by which the learned S.D.M. Dumraon has been pleased to converted the proceeding U/S 144 Cr.P.C. to 145 after hearing the petitioner and O.P. No. 8 for declaration the possession, although earlier the several court as well as Sub-Divisional Magistrate, Dumraon, District-Buxar has already declare a possession



over the land in question in favour of the petitioner and further be pleased to set-aside the entire proceeding of the case No. 434(M) 07 pending before Sub-Divisional Magistrate, Dumraon, Buxar and further be pleased to restrained to Opp. Parties to not interfere into physical peaceful possession over the land in question of petitioner and further be pleased to stay the proceeding of case No. 434(M)07, pending before the Sub-Divisional Magistrate, Dumraon, District-Buxar till the disposal of this petition before this Hon'ble Court and or further be pleased to pass any appropriate order or orders as Your Lordships may deem fit and proper.”

5. A counter affidavit has also been filed on behalf of the opposite party no. 3 through Mr. Jharkhandi Upadhyay, learned APP for the State.

6. At the very outset, on a query of the Court that when the opposite party no. 3 had only passed an order under Section 145 and the issue had not reached to its logical conclusion and the same being of the year 2007, whether any real cause of action still persists, learned counsel for the petitioner very fairly submitted that the matter, for all practical purposes, has become infructuous. However, he submitted that the matter pending before the opposite party no. 3 is required to be given finality by passing final orders after hearing all concerned.

7. The opposite party no. 3 submitted that within the time, as may be fixed by the Court, he shall pass final orders in the proceeding. Both learned counsel for the petitioner and learned



counsel for the opposite party no. 3 assure the Court that they shall co-operate in the proceeding.

8. In view of the aforesaid, the application stands disposed off with a direction to the opposite party no. 3 to pass final orders expeditiously. The petitioner and the opposite party no. 8 agree to appear before the opposite party no. 3, either personally or through the learned counsel on 22nd April, 2019, at 11.00 A.M. Upon doing so, the next date in the case shall be fixed and it shall be ensured that the final orders are passed, in accordance with law, after considering all materials which may be produced by the parties latest by 22nd June, 2019. It is made clear that if there is non-cooperation by any of the parties, the opposite party no. 3 shall proceed in the matter without giving any undue indulgence.

(Ahsanuddin Amanullah, J.)

P. Kumar

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