

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.754 of 2016

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

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Raverend Nicholas Purty @ Rev. Nicholas Purti Son of Late Patras Purty
Resident of C.N.I. Church Campus Quarter Gaya, P.S. - Civil Lines, District -
Gaya.

... .. Petitioner

Versus

1. State of Bihar
2. Laltoo John @ William Alfred John Son of Late Andrias John Resident of
Gango Bigha, Janta Flat No. 133, Housing Board, P.S. - Rampur, District -
Gaya.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Mithilesh Kumar Upadhyay
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 05-08-2019

This revision application is directed against order dated 11.2.2016 passed by the Sub-divisional Magistrate, Sadar, Gaya in Misc. Case No.675 of 2001 under Section 145 of the Code of Criminal Procedure (hereinafter to be referred as 'the Cr.P.C.'), by which the learned Magistrate has decided the above proceeding in favour of the Opposite Party No.2 and directed the Opposite Party No.2 to look into the management of the Church property.

2. Facts giving rise to this Revision Application in short is that the proceeding under Section 144 of the Cr.P.C. was initiated by the Sub-divisional Magistrate, Gaya on the application filed by the Opposite Party No.2 against one Anand Paul, the then Secretary of C.N.I. Church, which was later on converted into the proceeding under



Section 145 Cr.P.C. It appears that the dispute is with respect to management of the Church situated besides Gandhi Maidan, Gaya. It further appears that the petitioner was second party in that case and Opposite Party No.2 was the first party. According to Opposite Party No.2, the dispute is with respect to Church run by the Baptist Church Trust Association (B.C.T.A.), Calcutta and one Rajendra Kamal was appointed as the Incharge of the B.C.T.A. and Opposite Party No.2 has no authority to interfere with the management of the church property but as they have given the vacant land for construction, as such there is apprehension of breach of peace.

3. The case of the petitioner is that the dispute is with respect to land of C.N.I. Church, Gaya, which has been looked after by the petitioner and for conducting the business, a Committee was elected with seven members. Petitioner is in possession of the Church, taking rent also and also making necessary repairing in the building.

4. It further appears from perusal of the record that the litigation between the parties is going on from before and earlier also some suits were filed with respect to church property, which will appear from Annexure nos. 4, 5 and 6. It further appears that the said Anand Paul died but the Sub-divisional Magistrate has decided the above proceeding under Section 145 of the Cr.P.C. without substituting heirs of Anand Paul in the proceeding, vide order dated 5.7.2005,



which was challenged by the petitioner in Cr. Misc. No.487 of 2006 before this Court, this Court, vide order dated 12.2.2007 quashed the order passed in the above proceeding and remanded the matter back to the Sub-divisional Magistrate, Gaya after adducing the evidence and also after giving opportunity to both the parties to lead their oral as well as documentary evidence.

5. It also appears that the evidence was adduced on behalf of the parties and the learned Sub-divisional Magistrate, vide order dated 11.2.2016 decided the proceeding in favour of the Opposite Party No.2 directing him to administer the property of the Church.

6. Being aggrieved by the same, this revision application has been preferred by the petitioner, who was second party in the proceeding under Section 145 of the Cr.P.C.

7. Grounds for assailing the order is that two witnesses have been examined on behalf of the petitioner in the proceeding under Section 145 of the Cr.P.C., however, the learned Magistrate has considered the evidence of one witness and without considering the evidences of another witness, who was non-else the petitioner himself, he has passed order in favour of the Opposite Party No.2, as such the impugned order suffers from non-consideration of evidence adduced by the petitioner.



8. Further grounds for assailing the impugned order is that both the parties claim that they are running the Church and administering the affairs of the Church, however, without looking into the documents or without giving them opportunity to produce the documents in their favour, order has been passed in favour of the Opposite Party No.2 though the evidence of Subhash Kaushar examined behalf of the petitioner discloses that the petitioner is residing in the quarter situated inside the Church and he is conducting the regular prayer, whereas no such evidence has been brought on behalf of the Opposite Party No.2. Further contention of the learned counsel for the petitioner is that in this case earlier also a title suit being Title Suit No.52 of 1984 was filed by the petitioner in the court of Munsif-Ist, Gaya, in which predecessor of the petitioner was defendant for grant of permanent injunction against the defendant for restraining from causing any obstruction or interference in the right of the petitioner to offer prayer and to perform religious rights in the Church, however, the suit for grant of permanent injunction was dismissed, vide order dated 22.12.1984; against which Misc. Appeal was preferred being Misc. Appeal No.5/3 of 1985 and that Misc. Appeal was also dismissed vide judgment dated 16.8.1985 by the Ist Addl. District Judge, Gaya and one Misc. Appeal was also filed by the predecessor of the petitioner before the Addl. Sub Judge, Gaya being



Misc. Appeal No.3 of 1986/30 of 1985 against the order dated 27.7.1985 passed in Title Suit No.53 of 1984 by the Munsif-1st, Gaya with regard to injunction matter and the above Misc. Appeal was allowed, vide judgement dated 18.7.1986. The aforesaid facts are necessary for arriving at a just decision but the learned Magistrate without considering the same has passed the impugned order directing the Opposite Party no.2 to administer the management of the Church.

9. On the other hand the learned counsel for the Opposite Party No.2 countered the argument advanced by the learned counsel for the petitioner and submitted that in a proceeding under Section 145 of the Cr.P.C. the learned Magistrate has to see only as who is in possession of the Church and considering the evidence available on the record that the Opposite Party No.2 is in possession of the land, decided the proceeding in favour of the Opposite Party No.2, as such there is no illegality in the above order, however, the learned counsel for the Opposite Party No.2 has also conceded that the evidence of the petitioner during the proceeding under Section 145 of the Cr.P.C. has not been considered.

10. Earlier also while remanding the case back, this Hon'ble Court vide order dated 12.2.2007 passed in Cr. Misc. No.487 of 2006 has directed the learned Magistrate to decide it afresh after giving opportunities to the parties to lead their oral as well as



documentary evidence, however, it appears that there is no discussion on the documents, if any, produced by the parties in order to find out as who is conducting the prayer in the Church and also to find out as who are managing the Church property but it appears that only considering evidence that Opposite Party No. 2 has given shop on rent and realising rent, order has been passed and that too without considering the evidence of the petitioner, who has been examined as a witness in the proceeding. In view of the above, impugned order passed by the learned Magistrate can not sustain .

11. Accordingly, this revision application is allowed, impugned order is set aside and the matter is remanded back to the learned Sub-divisional Magistrate, Gaya to decide it afresh after giving opportunity to both the parties to adduce oral evidence as well as documentary evidence with regard to administration of the Church and also after considering the earlier order passed by the Civil Court, pass an appropriate order.

(Vinod Kumar Sinha, J)

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