

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10017 of 2015

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

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Tribhuwan Prasad son of late Jamadar Prasad R/o vill. Surapur Chhapia,
Post-Para, P.S. Hussainganj, Dist. Siwan

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sri Durgesh Kumar the Executive Magistrate, Siwan

... .. Contemnors/ Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Sharma
For the Opposite Party/s : Mr.Satyendra Nr. Singh App

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 09-01-2020

Heard learned counsel for the petitioner and learned APP
for the State.

It is the petitioner's case that he had purchased some and
in the name of his wife from its owner. When the petitioner
started construction on his purchased portion of the plot no. 575,
on an area of 2 katha 4 ³/₄ dhurs an application was filed under
Section 144 of the Code of Criminal Procedure (for short 'the
Code') by one Baikunth Nath Mishra, Principal of a Primary
School alleging that the lands have been gifted to the State
Government for school. The proceedings were thereafter
converted into one under Section 145 of the Code. The
Executive Magistrate, by order dated 20.04.1992, has dropped
the proceedings on report of the Circle Officer dated 21.11.1990



that second party (Petitioner) has possession over the land in question. The said Baikunth Nath Mishra filed a Revision Application before the learned Sessions Judge, Siwan for setting aside the order dated 20.04.1992, the same was also dismissed.

Baikunth Nath Mishra, thereafter, approached this Court in Cr. Misc. No. 10411 of 1992. The petitioner was impleaded as a party in the said case. The matter was remitted back to the Executive Magistrate to dispose it off at an early date after giving an opportunity to the parties to adduce evidence expeditiously and preferably within a period of one month from the date of the order.

The order passed by this Court in Cr. Misc. no. 10411 of 1992 is dated 29.10.1992. The same is Annexure-4 to the petition. The said order was passed on an application made by the first party in the proceedings before the Executive Magistrate, namely, Baikunth Nath Mishra. Apparently, upon remand, no final order has been passed by the Executive Magistrate. In the circumstance, the petitioner approached this Court for initiation of Contempt proceedings against the Executive Magistrate for violation and disobedience of the order dated 29.10.1992 passed in Cr. Misc. no. 10411 of 1992. The matter was taken up by a Division Bench of this Court on



12.01.2015. This Court observed that if the petitioner is desirous of putting some effect to the order (order of the High court in Cr. Misc. No. 10411 of 1992) he should approach this Court again under Section 482 of the Code. Thereafter, this Court directed that the petition be listed after changing the nature of the case and number of the petition and registering it afresh. Accordingly, the Original Cr. Misc. (D.B.) No. 01 of 2015 lodged by the petitioner was converted into an application under Section 482 of the Code, and as such, the instant proceedings were instituted as Cr. Misc. No. 10017 of 2015.

Petitioner's counsel submits that in spite of such order of this Court till date the Executive Magistrate has not disposed off the pending application under Section 144 of the Code. On a query put by this Court whether the order was on a petition filed by the petitioner, the answer is in the negative. . The petitioner of the instant proceedings was not a petitioner in Cr. Misc. no. 10411 of 1992. She was also not a petitioner (first party) in the proceedings before the Executive Magistrate or in the Revisional proceedings before the learned Sessions Judge arising out of the orders passed under Sections 144 and 145 of the Code. On a specific query made as to how the petitioner is prejudiced by pendency of the proceedings under Sections 144



and 145 of the Code instituted at the instance of Baikunth Nath Mishra, she is not in a position to point out any such prejudice being caused to the petitioner.

The order passed in Cr. Misc. No. 10411 of 1992 was in favour of the petitioner therein, namely, Baikunth Nath Mishra. On the basis of the order dated 29.10.1992, at best, Baikunth Nath Mishra, would have a cause for getting the matter under Sections 144 or 145 of the Code expedited before the Magistrate, if he wanted to avail the benefit of such remand by this Court. The petitioner who has not suffered any prejudice cannot be permitted to invoke the jurisdiction of this Court under Section 482 of the Code for any direction in this regard.

This application is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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