

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33641 of 2021

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

Rajo Paswan, son of late bhubneshwar Paswan, resident of village-Nonepur,
P.O. NNonepur, P.S.-Teghra, District-Begusarai

... .. Petitioner

Versus

1. The State of Bihar
2. Ram Bashistha Singh, son of late Rambalak Singh, resident of village-
bihat, Tola-Maksospur, ward no. -07 Nagar Parishad Bihat, P.S.-Barauni,
District-Begusarai.

... .. Opposite Party

Appearance :

For the Petitioner/s :	Mr.Poddar Suresh Gandhi, Advocate
For the Opposite Party/s :	Mr. Pushkar Narain Shahi, Sr. Advocate
	Mr. Waliur Rahman, Advocate
	Mr. Pushpendra Kumar Singh, Advocate
For the State :	Mr. Matloob Rab, A.P.P.-34

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 19-05-2022 Heard Mr.Poddar Suresh Gandhi, learned counsel for
the petitioner and Mr. Pushkar Narain Shahi, learned Senior
Counsel for the opposite party no. 2 assisted by Mr. Waliur
Rahman.

Petitioner in this case is aggrieved by and dissatisfied
with the order of Sub-Divisional Magistrate, Teghra in Case No.
826M of 2017 passed under Section 146 (1) Cr.P.C. and the
order dated 04.02.2021 passed by learned Sessions Judge,
Begusarai in Cr. Revision No. 90 of 2020 whereby the Criminal
Revision has been held not maintainable.

Learned counsel for the petitioner submits that the



petitioner owned and possessed the land of Mauza-Nonepur, Tauzi No. 973, Khata no. 65, Khesra no. 1312, area 7 bighas, 06 Kattha, 14 dhurs of land. He is claiming being the descendant of recorded tenant Bhikhari, son of Birju.

Learned counsel submits that in this case the opposite party no. 2 filed a petition for drawing a proceeding under Section 144 Cr.P.C. over which a police report was called for from Teghra Police Station and on the basis of the said police report a proceeding under Section 144 Cr.P.C. was drawn against both the parties which has later on converted into a proceeding under Section 145 Cr.P.C. after hearing the parties.

The opposite party no. 2 filed a petition for attachment of the disputed land and appointment of receiver which was considered by the learned S.D.M. and vide order dated 25.06.2019 the learned S.D.M. has been pleased to pass an order under Section 146(1) Cr.P.C. whereby he has attached the entire 7 bighas, 06 Kattha, 14 dhurs of land of Khesra No. 1312 and appointed the Circle Officer, Teghra as receiver.

Learned counsel submits that the S.D.M. passed the order dated 25.06.2019 without looking into the report of the concerned Police Station which was available on the record and as per the said report the police had got secret information in



course of enquiry that the second party was cultivating for last 5-6 years.

Learned counsel further submits that even though the S.D.M. is competent to pass an order of attachment but the mandate of Sub-section (1) of Section 146 Cr.P.C. is that such power of attachment may be exercised only in case of emergency and after recording one of the circumstances stated under Sub-section (1) of Section 146 Cr.P.C.

It is his further submission that being aggrieved by the order of S.D.M. when he moved in revision before the learned Sessions Judge, Begusarai, the same has been rejected as not maintainable. It is his submission that with the revision application there was an application under Section 5 of the Limitation Act seeking condonation of delay but the learned Sessions Judge did not look into that application and by recording an observation that the order under challenge is an interlocutory order hence, the case is not admitted for hearing, dismissed the revision application at the admission stage itself.

On the other hand, Mr. Pushkar Narain Shahi, learned Senior Counsel for the opposite party no. 2 submits that the learned Sessions Judge has not committed any error in dismissing the revision application by holding that the same is



not maintainable. Learned Senior Counsel further submits that the fact that the learned Sessions Judge has observed that revision is not maintainable in the light of the judgment of this Court has not been controverted by the learned counsel for the petitioner. Reliance in this regard has been placed upon the Hon'ble Division Bench judgment of this Court in the case of **Bechan Mahto and others Versus The State of Bihar and another** reported in **1988 PLJR 384**. The two other judgments on the point are **(Jai Prakash versus Rajeshwar Prasad and others) 2003 (4) Criminal Law Journal 4278** and **(Haripoda Mardi and others versus State of Jharkhand and others) 2004(1) Criminal Law Journal 345**.

Attention of this Court has been drawn towards paragraphs '9', '10', '11' and '12' of the judgment in **Bechan Mahto** (supra). The Hon'ble Division Bench has held that the attachment of property under Section 146(1) of the Code is transitory in nature in and it needs no great erudition to hold that an order essentially ephemeral is not to be labelled as final or quasi final. In paragraph '20' of the judgment in the case of **Bechan Mahto** (supra) the Hon'ble Division Bench has concluded thus:-

“20. To finally conclude, both on principle and precedent, the answer to the question posed at the



very outset is rendered in the affirmative and it is held that an order of attachment of an immovable property under section 146(1) of the Code is interlocutory in nature within the meaning of section 397(2) of the Code and consequently no revision against the same is maintainable.”

It is further submitted on behalf of opposite party no. 2 that 145 Cr.P.C. proceeding is still pending and it would be in the interest of the parties if this Court in its inherent power directs the S.D.M., Teghra to dispose of the 145 Cr.P.C. proceeding itself.

Having heard learned counsel for the petitioner and learned Senior Counsel for the opposite party no. 2 as also on perusal of the record, this Court finds that the petitioner had moved in revision challenging the order dated 25.06.2019 passed by learned S.D.M., Teghra whereby he had passed an order of attachment and appointment of receiver in exercise of his power under Sub-section (1) of Section 146 Cr.P.C. Section 146 Cr.P.C. reads as under:-

“146. Power to attach subject of dispute and to appoint receiver.-(1) If the Magistrate at any time after making the order under sub- section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in



section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.”

A bare perusal of the aforesaid provision would show that under the first proviso to Section 146 Cr.P.C. the Magistrate



may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

Learned counsel for the petitioner has informed this Court that he has never moved before the learned Magistrate seeking withdrawal of the order of attachment but in case the liberty is granted, petitioner may file an appropriate application before the learned Magistrate for consideration.

So far as the order of the revisional court is concerned in view of the Hon'ble Division Bench judgment of this Court as noticed above, this Court is of the considered opinion that no fault may be found with the revisional order. The learned Sessions Judge, Begusarai has rightly refused to admit the revision application in view of the Hon'ble Division Bench judgment of this Court in **Bechan Mahto** (supra). This Court, therefore, declines to interfere with the revisional order but liberty is granted to the petitioner to file an appropriate application before the learned Magistrate seeking withdrawal of the order of attachment and appointment of receiver. All contentions on behalf of both the parties are left open for consideration if such an application is filed.

Before this Court parts with the order it is worth



taking note of the fact that 145 Cr.P.C. proceeding was initiated as back as in the year 2018 but this Court has been given to understand that till date the matter has not progressed and it has remained pending without any further development. If this is the position then it is high time for the Sub-Divisional Magistrate, Teghra to take immediate measures to proceed with the 145 Cr.P.C. case and dispose of the same as early as possible in accordance with law after giving opportunity to both the parties but without granting any unnecessary adjournment preferably within a period of six months from the date of communication of this order.

This application stands disposed of with the
aforementioned observations.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

