

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33622 of 2016

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

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1. AKBAR ALI S/o Late Jan Mohammad Mian
 2. Jafar Ali
 3. Haidar Ali
 4. Javed Ali All aforesaid three petitioners are sons of Akbar Ali All resident of Village- Nawa Nagar Nizamat, P.O.- Kurnowl, P.S.- Sahebganj, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Md. Naushad Alam S/o Ash Mohammad (Opp. Party no.-2/1st Party) All resident of Village- Nawa Nagar Nizamat, P.O.- Kurnowl, P.S.- Sahebganj, District- Muzaffarpur. Permanent address Village- Jagarnathpur, P.O.- Chhap, PS.-Paru, District- Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ S.K., Advocates.
For the Opposite Party No.1: Mr. Anand Kishore Choudhary, APP
For OP No. 2 : None

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

6 15-12-2023 The present petition under Section 482 CrPC has been filed by the petitioner impugning the order dated 11.04.2016 passed by Ld. Sub-Divisional Magistrate (West), Muzaffarpur in Case No. M 251/2016 whereby Ld. Magistrate has converted the proceeding initiated under Section 144 CrPC into one under Section 145 CrPC in regard to landed property bearing Khata No. 258, Khesra No. 3259 measuring total 8 decimal.

2. As per the impugned order, half of the said land in question is in the name of mother of Md. Naushad Alam who is



OP No.2 herein and half of the said land comes in the share of Akbar Ali who is petitioner herein. He (the petitioner herein) intends to do construction work over the land resulting into tension between both the parties. As per the impugned order, Ld. Magistrate has held that on account of dispute between the parties in regard to possession of the land in question, there is possibility of breach of peace. Hence, the proceeding under Section 144 CrPC was converted by Ld. Magistrate into one under Section 145 CrPC and invited both the parties to adduce evidence in support of their rival claims.

3. Heard Ld. Counsel for the petitioners and Ld. APP for the State. No body appears on behalf of O.P. No.2 despite valid service of notice upon him.

4. Ld. Counsel for the petitioners submits that impugned order dated 11.04.2016 is not sustainable claiming that as per facts and circumstance, there is no apprehension of breach of peace with respect to the land in dispute between the parties. At most the dispute between the parties is private in nature and no public at large are involved. As such, there was no occasion for Ld. Magistrate to invoke the extraordinary jurisdiction provided under Section 145 Cr.PC. It is a classic case for the Civil Court to adjudicate the dispute between the



parties. Even mother of OP No. 2 (Eidan Khatoon) has already approached the Civil Court by way of Partition Suit No. 447/2022 filed in the court of Sub-Judge 1st, West, Muzaffarpur and the parties herein have occasion to move any application for any interim relief. Ld. Magistrate has, as such, abused the process of the court by invoking jurisdiction under Section 145 CrPC and hence, it is liable to be quashed. Ld. Counsel for the petitioners also refers to and relies upon ***Yugal Kishore Choudhary v. State of Bihar*** as decided by this Court and as reported in ***2023(6) BLJ 360***.

5. However, Ld. APP for the State defends the order of the Magistrate submitting that there is no infirmity or illegality in the impugned order.

6. This Court in ***Yugal Kishore Choudhary (supra)*** has elaborately discussed the scope and extent of jurisdiction under Section 145 CrPC. In this case, this Court has held as follows:-

“9. Section 145 Cr. P.C. is the part of Chapter X of the Code of Criminal Procedure, 1973 dealing with maintenance of public order and tranquility. Section 145 Cr. P.C. is the part of Sub Chapter D dealing with disputes as to immovable property. Besides Section 145 Cr. P.C., Section 146, 147 and 148 Cr. P.C. are also part of Sub Chapter D of Chapter X of Cr. P.C. It is found that disputes over the land and water often results in breach of the peace, violence and bloodshed, the Executive Magistrates have



been empowered under Section 145-148 to intervene at an incipient stage of such a dispute and to compel the disputants to have recourse to legal remedies. If, upon a report of a police officer or upon other information, an Executive Magistrate is satisfied that a dispute concerning any land or water or the boundaries thereof exists within his jurisdiction, and that such dispute is likely to cause a breach of the peace, he shall make an order in writing requiring the parties concerned in such dispute to attend to his court on a specified date and time, and to put in written statements of their claims regarding the fact of actual possession of the subject of dispute. While making such order, the Magistrate shall state the grounds for his satisfaction referred to above. The very foundation of the jurisdiction of a Magistrate in cases under Section 145 is based on the existence of a dispute giving rise to apprehension of breach of peace and as soon as such apprehension ceases to exist or if it never existed, the jurisdiction of the Magistrate to proceed with the case ceases and the only order he has to pass is to drop the proceedings. The enquiry under Section 145(4) is limited to the question of actual possession on the relevant date and is not concerned with the claims and merits of the parties in regard to the right to possess the subject of dispute. If the magistrate decides that one of the parties was in possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.”

7. After referring to various case laws, this Court in

Yugal Kishore Choudhary (supra), has further held as follows:-

“53. As such, it emerges from the statutory provisions of Section 145 Cr. P.C. and relevant case laws on the subject that mandate of Section 145 Cr.P.C. is that in case taking forceful possession of any



property by either party leads to apprehension of breach of public peace, proceeding under Section 145 Cr. P.C should be initiated and the possession of property of the party should be protected against forceful dispossession by other party taking law in his own hand. It also manifests that apprehension of breach of public peace is sine qua non for invoking jurisdiction under Section 145 Cr. P.C. by Executive Magistrates. It is also pertinent to point out that concept of public peace and tranquility is much wider concept than that of simple problem of law and order. All law and order problems cannot be equated with breach of public peace unless it affects the public at large, like riot, affray or widespread unrest. Simple disputes between two individuals involving violation of penal laws on the part of the two cannot be termed as breach of public peace. Similarly, purely civil dispute between two individuals also cannot be treated as breach of public peace. For resolution of civil disputes between parties, there is establishment of Civil Courts in our legal framework, whereas in case of violation of criminal law, there is provision of prosecution of such persons in criminal courts. Occasion for invoking jurisdiction under Section 145 Cr. P.C. comes to Executive Magistrate only where there is apprehension of breach of public peace and tranquility so that such breach may be nipped in the bud. However, on the pretext of apprehension of breach of public peace, Executive Magistrate is not expected to exercise jurisdiction of Civil or Criminal Courts. Such colourable exercise of jurisdiction would be against the object and spirit of Section 145 Cr. P.C. and it would render Civil and Criminal Courts irrelevant and the people would get harassed by illegal and unnecessary



proceedings. In our legal framework, power and jurisdiction are defined for different instrumentalities of the State and no instrumentality is expected to exceed its jurisdiction and encroach upon that of others.”

8. In the case at hand, I find that there is dispute between the parties in regard to the title and possession over the land in question and one of the parties has already approached Civil Courts by way of Partition Suit No. 447/2022 and the petitioner and father of the OP No.2 are already impleaded as defendants in the said partition suit. Moreover, there is no allegation of forceful dispossession or attempt for dispossession, nor is there any allegation that public at large are affected by the dispute leading to apprehension of breach of public peace and tranquility. Ld. Magistrate after referring to facts and circumstances of the case, has opined that in view of dispute between the parties in regard to the landed property in dispute, there is possibility of apprehension of breach of peace. But Ld. Magistrate has not stated the grounds for such satisfaction. But dispute between few individuals in regard to landed property, without affecting the public at large cannot lead to any apprehension of peace and tranquility.

9. The alleged facts and circumstances of the case



constitute a classical case of civil dispute between few individuals and civil court is already seized with the matter and the parties have occasion to approach the Civil Court, even for interim relief by way of application and the Civil Court is duty bound to dispose of their interim application without any delay.

10. As such, there was no occasion for Ld. Magistrate to invoke the jurisdiction as provided under Section 145 CrPC. The resort to Section 145 CrPC by Ld. Magistrate is colourable exercise of power. It goes without saying that initiation of proceeding under Section 145 CrPC is abuse of the process of the Court and law. Hence, order dated 11.04.2016 passed by Sub-Divisional Magistrate (West), Muzaffarpur in Case No. M 251/2016 is not sustainable in the eye of law and accordingly, quashed, allowing the petition.

(Jitendra Kumar, J)

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