

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.203 of 2022

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

Abinash Kumar, Son of Late Ramadhar Sharma Resident of A-3, Professor Colony, Ward No.- 29 Near Aghoria Bazar Chowk, Musahri, Ramna, Muzaffarpur, District - Muzaffarpur, Bihar - 842002.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sub-Divisional Magistrate, Mahua, District - Vaishali. Bihar
3. Officer-in-Charge, Tisiauta Police Station, District - Vaishali. Bihar
4. Amitabh Kumar Son of Late Ramadhar Sharma Resident of Village - Loma, P.O.- Loma, P.S.- Tisiauta, District - Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Singh, Advocate
For the State	:	Mr. Jai Narain Thakur, A.P.P
For the Opposite Party	:	

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 17-02-2024 1. The instant revision is directed against an order, dated 10th of January, 2022, passed in Criminal Case No. 321 of 2021 by the learned Sub-Divisional Judicial Magistrate, Mahua (Vaishali), whereby and whereunder, by showing the land of the petitioner as disputed land, the learned Magistrate initiated a proceeding under Section 145 of the Cr.P.C., for which he has no jurisdiction.

2. The case of the petitioner, in brief, is that he was granted License No. 3 of 2018 on 8th of July, 2018 by the Indian Oil Corporation Limited (hereinafter referred to as the I.O.C.L.)



for running a petrol pump at Loma, Jandaha, Vaishali in the State of Bihar. Subsequently, the petitioner was granted registration certificate on 30th of October, 2020. The said business is a proprietorship business of the petitioner situated on the land recorded in the name of the petitioner, bearing Khata No. 565, Plot No. 4099, measuring an area of 28 decimals, of which land measuring about 25 decimals belongs to the petitioner and rest 3 decimals of land belongs to the Opposite Party No. 4. Further case of the petitioner is that on 18th of October, 2021, he purchased fuel amounting to Rs. 12,34,277/- and the said fuel was loaded in his petrol pump. Subsequently, on 19th of October, 2021, the Opposite Party No. 4 came to the petrol pump of the petitioner along with his wife and brother-in-law and damaged the building of the petrol pump and abused the petitioner. The petitioner informed the matter to Tisiauta Police Station on the date of occurrence and requested the police authority to register FIR against the accused persons. However, the Police Officer of the said Police Station advised and recommended him to file a proceeding under Section 144 Cr.P.C.. Accordingly, on his application, a proceeding under Section 144 of the Cr.P.C., being Case No. 20 of 2021, dated 1st of November, 2021, was registered. The learned Sub-Divisional



Judicial Magistrate initiated a proceeding under Section 144 of the Cr.P.C. and issued notice to both the parties, directing them not to enter into the disputed land or not to commit any act that might cause breach of peace. The disputed land was wrongly stated in the said notice by the Executive Magistrate as 20 decimals of land recorded in Khata No. 565, Plot No. 4099. The petitioner filed a reply on 6th of January, 2022, stating the entire fact regarding ownership of the land in question. The Opposite Party No. 4 also filed a reply to the said notice requesting the learned Sub-Divisional Judicial Magistrate to convert the said proceeding under Section 145 of the Cr.P.C. The learned Executive Magistrate allowed the prayer made by the Opposite Party No. 4 and converted the proceeding under Section 145 of the Cr.P.C.

3. It is submitted by the petitioner that the Opposite Party No. 4 does not have any right, title and interest over the disputed land. He is not the recorded owner of the said land. The land in question was recorded in the name of the petitioner and the Executive Magistrate wrongly passed the impugned order, converting the proceeding as one under Section 145 of the Cr.P.C.

4. The Opposite Party No. 4 has filed a counter-



affidavit stating, *inter alia*, that he is the full elder brother of the petitioner. All along, the petitioner and Opposite Party No. 4 used to stay in jointness and there was jointness of the family, even after death of the father of the parties. Before the death the father of the parties, he executed a Will and bequeathed interest in the state jointness of the both parties except the subject land which stood transferred in the name of the petitioner over which on receipt of license from I.O.C.L., the petitioner opened Rama Fuel Kisan Seva Kendra.

5. It is contended on behalf of the Opposite Party No. 4 that though the petrol pump was situated on the land recorded in the name of the petitioner, it was decided by and both the parties that they would run the petrol pump jointly for common interest of the family. Therefore, as a result of mutual consent between the petitioner and the Opposite Party No. 4, the subject land was partitioned and subsequently mutated in the name of the petitioner to run Indian Oil Outlet under the name and style of Rama Fuel Kisan Seva Kendra. However, the Opposite Party No. 4 administered, controlled and managed financially the said petrol pump from the very beginning till commissioning of the outlet. The Opposite Party No. 4 had transferred a sum of Rs. 10,49,000/- on 17th November, 2014 through bank transfer in



favour of the petitioner as he had no financial capacity to run such business. The Opposite Party No. 4 also purchased separate fuel tanks for storing diesel and petrol by his own money. He issued demand draft amounting to Rs. 9,04,248/- in favour of I.O.C.L. with a view to securing allotment of petrol and diesel etc. Thus, the Opposite Party No. 4 has been providing financial assistance to the petitioner in order to keep the said petrol pump in running condition. On number of occasions he paid or deposited by way of bank transfer to the petitioner huge amount of money considering the fact that the said business is actually a family business. That on 26th of August, 2020, a partnership deed was executed between the parties, whereunder it was stipulated that the said petrol pump would be run as a partnership business.

6. On the aforementioned factual background and considering the case of the opposite party, the learned Sub-Divisional Judicial Magistrate converted the proceeding under Section 144 of the Cr.P.C. into a proceeding under Section 145 of the Cr.P.C. The petitioner, in turn, filed reply to the counter affidavit denying all the allegations made by the Opposite Party No. 4 in his counter affidavit.

7. Since the dispute arose between two full brothers, a



co-ordinate Bench, *vide* an order dated 21st of March, 2023, referred the case before Patna High Court Mediation Centre for amicable settlement. However, mediation having been failed, the instant revision is listed “For Admission”.

8. I have heard the learned counsels for the parties at length. I have also perused the entire materials on record.

9. It is needless to say that Chapter X of the Code of Criminal Procedure deals with Maintenance of Public Order and Tranquility, and Section 145 is the last branch of preventive jurisdiction of the Magistrate relating to disputes regarding possession of land or water or its boundaries, which are bound to be very keen and which too easily lend themselves to breach of peace. The disputes do not affect public or community at large; but between the disputants they are fraught with consequences dangerous in themselves. The business of the Magistrate is not to go into question of title, but to meet the urgency of the situation by maintaining the party in possession. The Magistrate can, therefore, call upon the parties to put in written statements in support of their claim to actual possession. The order is to be served as a summons. The Magistrate is to pursue the statements, hear the parties and weigh the evidence in order to ascertain who was in possession at the date of the



order. If possession has been wrongfully taken within two months of the police report or other information, or after the date and before the date of his order, the persons who dispossessed is to be taken as a person in possession. When the subject matter is liable to be speedy and natural decay, it may be sold and the sale proceeds can be dealt with as the Magistrate things fit. If the Magistrate is satisfied that no dispute exists, he can drop the proceeding. If he declares the one parties in possession, that party can be evicted only in due course of law i.e., by a decree of the Civil Court on title.

10. To initiate a proceeding under Section 145 of the Cr.P.C., three requirements have to fulfilled, viz,

(i) there must be a real breach of peace inviting such proceedings;

(ii) There must be a material on record to prove the actual breach of peace; and

(iii) The Executive Magistrate shall form a subjective satisfaction to initiate such proceedings.

11. In substance and effect, a proceeding under Section 145 is not for the purpose of evicting any person from any land but is primarily concerned with the prevention of breach of peace by declaring the party found in possession to be



entitled to remain in possession until evicted therefrom, in due course of law.

12. In the instant case, it is not disputed, rather admitted by the Opposite Party No. 4 that the subject land where the petrol pump was set-up belongs to the petitioner. He became the absolute owner of the subject land on the basis of partition between him and the Opposite Party No. 4. The license of the petrol pump was allotted in the name of the petitioner. It was also registered in his name. He runs the business, thus the petitioner is in possession of the land and the business.

13. It may be a fact that the Opposite Party No. 4 being his elder brother, contributed substantial money in the business of the petitioner. If the Opposite Party No. 4 wants to get back the said money and it is not returned to him by the petitioner, the Opposite Party No. 4 has every right to file a suit for recovery of money against the petitioner and get back the money which he spends in the said business along with interest in execution of money. However, by initiating a proceeding under Section 145 of the Cr.P.C, nobody can disturb settled possession of a party.

14. In the instant case, the petitioner is in settled possession over the subject land as well as business. A



proceeding under section 145 Cr.P.C. is not maintainable to disturb the settled possession when the petitioner is in possession of the subject land and the business of petrol pump runs in his favour, no proceeding under Section 145 of the Cr.P.C. lies against the petitioner.

15. In view of the above discussion, the instant revision is allowed.

16. The proceeding under Section 145 of the Cr.P.C. initiated by Sub-Divisional Judicial Magistrate be quashed and set aside.

(Bibek Chaudhuri, J)

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