

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43163 of 2016

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

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Mahanth Bharat Das Son of Late Mahanth Ram Swaroop Das, Resident of
Village- Lahan Dhaka, Police Station- Dhaka, District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Kadir Son of Late Farid
3. SK. Khurshid Son of Late SK. Tuzar, Both Residents of Village- Lahan
Dhaka, Police Station- Dhaka, District- East Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Madhurendra Kumar, Adv.
For the Opposite Party/s : Mr. Upendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

3 04-01-2024 The present petition under Section 482 Cr. PC has

been preferred by the petitioner against the impugned order
dated 27.04.2016 passed by Ld. Additional Sessions Judge-II,
Motihari, East Champaran in Criminal Revision no. 72 of 2013
(87 of 2015) whereby Ld. Revisional Court has set aside the
order dated 01.03.2013 passed by Ld. Sub-Divisional
Magistrate, Sikarahana (Dhaka) in case No. 138(M) of 2013
whereby Ld. Sub-Divisional Magistrate had initiated proceeding
under Section 145 Cr. PC in regard to the landed property
bearing Khata No. 134, Khesara No. 540 measuring area 08



Kattha situated in the village Lahan, Dhaka, Police Station Dhaka, directing both the parties to appear in his Court and submit their written statements and adduce evidence. By this order, Ld. Sub-Divisional Magistrate also directed the second party, Kadir, who is O.P. No. 2 herein to file show-cause.

2. It transpires that police station Dhaka had reported to Ld. Sub-Divisional Magistrate that there is tension between both the parties i.e., Mahanth Bharat Das and Kadir and there is apprehension of breach of peace. Officer in-charge of the Police Station therefore recommended initiation of proceeding under Section 145 and 146 of Cr. PC. Subsequently, getting satisfied as per the report of police, Ld. Sub-Divisional Magistrate passed order dated 01.03.2013. However, Ld. Revisional Court by the impugned order set aside the aforesaid order dated 01.03.2013 passed by Ld Sub-Divisional Magistrate holding that the title suit between the parties in regard to the landed property in question is pending in competent Civil Court. Hence, the proceeding initiated before the Ld. Sub-Divisional Magistrate is not maintainable in the eye of law.

3. The case is at the stage of admission.

4. Heard Ld. Counsel for the petitioner on admission.

5. Ld. Counsel for the petitioner submits that the



impugned order passed by Ld. Revisional Court is not sustainable in the eye of law. He further submits that in view of tension between the parties, Ld. Sub-Divisional Magistrate had rightly initiated the proceeding under Section 145 of Cr. PC which should not have been set aside by him. However, he admits that a Civil Suit bearing Title Suit No. 2023 of 1997 is pending between the parties as noted by Ld. Revisional court in his judgment.

6. I considered the submissions advanced by the Ld. Counsel for the petitioner and perused the material on record.

7. This Court in **Yugal Kishore Choudhary Vs. the State of Bihar [2023 (5) BLJ 360], [2023 (4) PLJR 493], AIRONLINE 2023 PAT 651**, has elaborately discussed the scope and extent of jurisdiction under Section 145 Cr. PC. 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.”

8. After referring to various case laws, this Court in **Yugal Kishore Choudhary Vs. the State of Bihar (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.”

9. In the case at hand, I find that as per police report there is tension between both the parties on account of landed property in question. However, admittedly civil suit bearing Title Suit No. 2023 of 1997 has been pending in the competent Civil court. Moreover, as per the report of the police, there is no allegation of forceful dispossession or even attempt of dispossession, nor is there any allegation that public at large are affected by the dispute which could lead to apprehension of breach of public peace and tranquility. I also find that only in the light of report of the police, Ld. Magistrate had got satisfied to



initiate proceeding under Section 145 of Cr. PC. However, Ld. Magistrate has not stated grounds for such satisfaction i.e. how the report of the police could make him get satisfied that there is apprehension of breach of peace. Moreover, I find that the dispute is only between few individuals in regard to the landed property in question and not public at large. Such facts and circumstances cannot lead to any apprehension of breach of peace and tranquility. The alleged facts and circumstances, at most, constitute a classical case of civil dispute between few individuals and the Civil Court is already seized with the matter and the parties have occasion to approach Civil Court for interim reliefs if required 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 of Cr. PC. The resort to Section 145 of Cr. PC by Ld. Magistrate is colourable exercise of power. It goes without saying that initiation of proceeding under Section 145 Cr. PC is an abuse of the process of the Court and law. Hence, order dated 01.03.2013 is not sustainable in the eye of law and hence, Ld. Revisional Court has rightly set aside the said order passed by Ld. Sub-Divisional Magistrate by the impugned order.



11. Hence, there is no illegality or impropriety committed by the Ld. Revisional Court in passing the impugned order. Accordingly the present petition, being bereft of merit, is dismissed *in limine*.

(Jitendra Kumar, J)

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