

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68972 of 2023

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

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Dippu Lal Bhaiya, Son of Damodar Lal Bhiaya, Resident of Village- Karsali,
P.S.- Vishnupat, Distt- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vishnupad Prabhand Karini Samiti though Shambhu La Bithal

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Mrigendra Pratap Singh, Advocate
For the Opposite Party/s :	Mr. Madhura Nand Jha, APP
For Opposite Party No. 2:	Mr. Roy Saurabh Nath with Ms. Manjari Nath, Advocates

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-08-2024

Heard Mr. Baxi S.R.P. Sinha, learned Senior Advocate with Mr. Mrigendra Pratap Singh, learned Advocate for the petitioner, Mr. Roy Saurabh Nath, learned Advocate for opposite party no.2 and learned APP for the State.

2. The petitioner is aggrieved by the order dated 23.05.2023 passed by the Sub-Divisional Magistrate, Sadar Gaya in Misc. Case No. 295 of 2023 by which the proceeding initiated under Section 144 of the Cr.P.C. has been converted into Section 145 of the Cr.P.C.

3. Learned Senior Advocate for the petitioner assailing the impugned order has contended that the land/property, in dispute is bearing plot no. 20348 over which



both the parties are claiming their right, title and interest. On 20.03.2023, an application was filed by the opposite party no.2 alleging therein that the property, in question, is being managed by Gaya Pal Brahman. One Bapaji Bhaiya was the member of Managing Committee. Later on, members of his family described the temple as private temple and they tried to capture the land and erected boundary wall. Many times, proceeding under Section 144 of the Cr.P.C. was initiated and decided in favour of the Committee, but the opposite party no.2 declaring the land of the temple as his private property, wanted to make construction over it, which is being opposed by the members of the Committee. Thus, a prayer was made to restrain them by making any construction and to maintain the law and order situation, so that no untoward incident may take place.

4. On the basis of the aforesaid application, Vishnupad police station instituted Non-FIR P.S. Case No. 06 of 2023. A report has been submitted with a recommendation for action under Section 144 of the Cr.P.C. The Sub-Divisional Magistrate (Sadar), Gaya on being satisfied that on account of land dispute there is every chance of breach of peace directed both the parties not to act in any manner resulting into breach of peace.



5. Being aggrieved, the petitioner filed Cr. Rev. No. 58 of 2023. The aforesaid case was admitted and notices were issued to the opposite parties. In the meantime, the proceeding under Section 144 of the Cr.P.C. converted into a proceeding under Section 145 of the Cr.P.C. vide order dated 25.05.2023, which is put to challenge before this Court.

6. Learned Senior Advocate questioning the aforenoted order primarily submitted that the order clearly reveals that there is no apprehension of any breach of peace and, as such, there was no reason or occasion to convert the 144 Cr.P.C. proceeding into proceeding of 145 of the Cr.P.C. Learned Senior Advocate drew the attention of this Court to Section 144 of the Cr.P.C. and submitted that this power can be exercised only in a case of apprehension of danger. However, the materials available on record clearly suggests that there was no apprehension or danger. It is further contended that Section 145 of the Cr.P.C. clearly says that whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of peace exists concerning any land or the boundaries thereof, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute



to attend a court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. However, no such ground exist to convert the proceeding and initiate a proceeding under Section 145 of the Cr.P.C.

7. Adverting the aforesaid submissions, noted hereinabove, learned Senior Advocate further drew the attention of this Court to the police report dated 21.03.2023, the copy of which is marked as Annexure-P/5. Referring thereto, it is further contended that the report only suggests that 2nd party wanted to capture the land illegally, due to which the law and order problem may arise. The reason assigned in the police report is not suffice to convert the proceeding under Section 145 of the Cr.P.C. is the contention of the learned Senior Advocate of the petitioner.

8. On the other hand, learned Advocate for opposite party no.2 submitted that there is no illegality in the order impugned converting the proceeding under Section 145 of the Cr.P.C. Earlier also a proceeding under Section 144 of the Cr.P.C. was initiated over the land in dispute and finally on 09.02.1990 it was decided in favour of opposite party no.2 on the basis of the documents/materials available on record and it



was found that opposite party no.2 was in possession of the property in dispute. The aforementioned order dated 09.02.1990 has never been questioned and thus attained finality. It is also contended that on being aggrieved by the proceeding initiated under Section 144 of the Cr.P.C., the petitioner had moved before the learned District Judge, Gaya in Cr. Revision No. 58 of 2023, which also came to be dismissed vide order dated 26.09.2023. The copy of which is marked as Annexure-B to the counter affidavit.

9. It is next contended that the petitioner has been encroachers and has always been trying to disturb the possession of opposite party no.2 and as they were in the process of capturing the land and tried to make illegal construction over the land in question, an application was filed on 20.03.2023 to restrain the petitioner from making any construction, which may lead to cause law and order problem. On being found apprehension of any untoward incidence and the nuisance at the hands of the petitioner, a proceeding was initiated under Section 144 of the Cr.P.C. and subsequently the same has been converted under Section 145 of the Cr.P.C. on the basis of the report. In a proceeding under Section 145 of the Cr.P.C.; it is the factum of the position, which is to be



decided/determined by the appropriate authority and if the petitioner has any claim over the property he can approach before the Civil Court of competent jurisdiction.

10. Having heard the learned counsel for the respective parties, this Court is of the opinion that a District Magistrate or the Sub-Divisional Magistrate or any Executive Magistrate is of the opinion that there was likelihood of breach of peace and the need arises to prevent the same, in such circumstances, the proceeding under Section 145 of the Cr.P.C. ought to be initiated. The materials available on record, including the application filed by the opposite party no.2 as well as the police report, the Sub-Divisional Magistrate, Gaya has accorded his satisfaction that there was a dispute between the parties in relation to land on account of which there was apprehension of a breach of peace and as such there was good reason for initiation of proceeding under Section 145 of the Cr.P.C. The petitioner allegedly wanted to capture the land of temple and there was apprehension of any untoward incident. The report submitted by the police in Non-F.I.R. No. 06 of 2023 also reveals that on demand being made by the I.O., the second party, who is the petitioner before this Court has not produced any document showing his right, title/entitlement over the land



in dispute.

11. Undoubtedly the Magistrates have been empowered by the Code to examine powers for maintaining peace and it is open to them to initiate a proceeding under Section 144 of the Cr.P.C. even in cases where the apprehension of the breach of peace is in relation to land and it is thus proper, in such a situation, action under Section 145 of the Cr.P.C. should be taken and the Magistrate should decide as to which of the rival claimant was in possession of the subject of dispute on the date of the proceeding.

12. The condition precedent to the exercise of jurisdiction under Section 145(1) of the Cr.P.C. is the satisfaction of the Magistrate regarding the existence of an apprehension of a breach of the peace concerning some land, and not his stating or not stating the grounds of his such satisfaction in the order drawing up the proceeding. If the Magistrate could have been satisfied on the basis of the materials available on record that there is an apprehension of a breach of the peace concerning some land existed the same is suffice to convert the proceeding under Section 145 of the Cr.P.C. In the case of ***R.H. Bhutani vs Miss Mani J. Desai & Ors, AIR 1968 SC 1444***, the Apex Court observed as follows:



“The satisfaction under sub-section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.”

13. In view thereof, this Court does not find any merit in the present application. Accordingly, the present quashing application stands dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
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