

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87921 of 2024

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

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1. Kamlakant Choudhary S/o Late Bidyanath Choudhary R/o Bishanpur, Ward No. 5, Bishanpur, P.S. Ashok Paper Mill, District -Darbhanga.
 2. Purushottam Kumar Choudhary S/o Kamlakant Choudhary R/o Bishanpur, Ward No. 5, Bishanpur, P.S. Ashok Paper Mill, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sub Divisional Officer, Sadar Darbhanga. Bihar
3. Circle Officer, Hayaghat, Darbhanga. Bihar
4. Sri Jai Prakash Singh, Sub-Inspector of Police, Ashok Paper Mill Police Station, District Darbhanga Bihar
5. Durga Prasad Choudhary S/o Late Jai Gopal Choudhary R/O P.O- Bishanpur, P.S- Ashok Mill, Dis- Darbhanga.
6. Ashok Kumar Choudhary S/o Late Hanuman Choudhary R/O P.O- Bishanpur, P.S- Ashok Mill, Dis- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jagannath Singh, Advocate Mr. Deepak Kumar, Advocate Mr. Padmanabh Kashyap, Advocate Md. Ghulam Mustafa, Advocate
For the Opposite Party/s :		Mr. Harendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-09-2025

Heard learned counsels appearing on behalf of the

petitioners and learned APP appearing on behalf of the State.

2. The present application has been filed for quashing the order dated 07.05.2024, by which the Sub-Divisional Officer, Sadar Darbhanga converted the proceeding under Section 144 of the Cr.P.C. into section 145 of the Cr.P.C., and attached the lands of the petitioners under Section 146(1) of the Cr.P.C. bearing Khata No.1080, Plot No. 1439, Area 4 Bigha 5 Kattha 4 Dhur, Khata No.2624 (New) area 1 Bigha & Khata



No. 2623 (New) 5 Kattha by appointing the Circle Officer, Hayaghat as receiver of the land in question.

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners have claimed that the land relating to Khata No.1080, Plot No.1439, Area 4 Bigha 5 Katha 4 Dhur, Khata No.2624 (New) Area 1 Bigha and Khata No.2623 (New) 5 Katha situated in Hayaghat Block, remained in their peaceful possession for last hundred years. The opposite parties, to disturb the petitioners from peaceful possession, filed an application under Section 144 Cr.P.C. before the Sub-Divisional Officer (SDO), Sadar, Darbhanga, claiming their title over the said piece of land. Notices were issued. The petitioners appeared through their counsel but without giving any opportunity, the SDO proceeded to pass impugned order and converted the proceeding under Section 144 to Sections 145 and the land in question was attached under Section 146(1) of the Cr.P.C. and the Circle Officer, Hayaghat was appointed as a receiver on the same day i.e. on 07.05.2024.

4. He further submitted that without holding any physical inquiry, the SDO proceeded to pass the order under Sections 146(1) of Cr.P.C. without there being any material on record to show that whether there was any breach of peace, over



the said piece of land and also he mechanically appointed the receiver. As such, the petitioners were restrained from cultivating any crop over the said land for their livelihood. Learned counsel submitted that in similar facts and circumstances, the Apex Court, dealing with the jurisdiction of the SDO, in case of **Ashok Kumar v. State of Uttarakhand** reported in **(2013) 3 SCC 366** has held that the necessary ingredients for passing an order under Section 145(1) of the Cr.P.C. would not automatically attract for the attachment of the property. The Apex Court further held that under Section 146 of the Cr.P.C., a Magistrate has to satisfy himself, as to whether, emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of a breach of the peace. On these backgrounds, learned counsel referring to the impugned order, submitted that from bare perusal of the order impugned, it is evident that the SDO has not given any reason or any ground for immediately acting in accordance with the Section 146(1) of the Cr.P.C. and ignoring the mandatory provision as required under Section 146(1) of the Cr.P.C., he appointed the receiver for the reason best known to him by putting loss to the petitioners and depriving them from



their rightful possession over the aforesaid piece of land, belonging to their family. He further submitted that the impugned order don't discuss any evidence which has been produced by the opposite parties in support of their claim, whereas, the petitioners have produced their long standing possession and have also produced the rent receipt, which was issued year after year, before the SDO, which has resulted into miscarriage of justice.

5. *Per contra*, learned counsel appearing on behalf of State submitted that the present quashing application is not maintainable, as the petitioners have alternative remedy of revision provided under Section 397 of the Cr.P.C. He further submitted that it is well settled that under Section 482 of the Cr.P.C. and Articles 226 and 227 of the Constitution of India, the Court should exercise sparingly the said power in extreme exigency. In the present case, the petitioners have not been able to show, as to why, they have not chosen to avail more efficacious alternate remedy of revision before the learned District Court.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, having read the content of



the petition filed under Section 144 of the Cr.P.C. by the opposite parties, which relates to a piece of land, as discussed hereinabove, the basis of filing of the petition by the opposite parties is that the opposite parties and their son/s and daughter/s reside outside their village. Taking the advantage of such situation, the petitioners have illegally occupied the above piece of land. It is also admitted that when the opposite parties tried to cultivate the said piece of land, the petitioners created unlawful assembly along with some miscreants in the area, restraining the complainants/opposite parties from their rightful possession over the land. The record reveals that a report was submitted by Sub-Inspector of Police, Ashok Paper Mill Police Station, District, Darbhanga, giving information that the petitioners were in rightful possession over the land, however, the report don't give any information, as to whether, any evidence was produced by the petitioners in respect of their claim. The report reveals that the petitioners have filed rent receipt and at the same time, the petitioners have brought on record the report of Anchal Amin. The application was also made by the opposite party nos.4, 5 and 6 for getting their land measured. The report was submitted by the Anchal Amin, showing the possession of the petitioners. In such circumstances, the question arise, as to



whether, the SDO was justified in initiating proceeding and taking action under Sections 145 and 146(1) of the Cr.P.C. Before I proceed to pass an order on merits, the question arises, as to whether, this Court can exercise its jurisdiction under Section 482 of the Cr.P.C./528 of BNSS when alternative remedy for filing miscellaneous revision under Section 397 of the Cr.P.C. is available to the petitioners. In this regard, I find it proper to refer a judgment by the Apex Court in case of ***Pepsi Foods Ltd. And Anr. Vs. SPI Judicial Magistrate and Ors*** reported in ***(1998) 5 SCC 749***. Learned counsel has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***G. Sagar Suri vs. State of Uttar Pradesh*** reported in ***(2000) 2 SCC 636*** and has submitted that in the aforesaid case, the Hon'ble Supreme Court has held that before issuing process, a criminal court has to exercise a great deal of caution. Lastly, learned counsel has also relied upon the decision of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal***, reported in ***1992 Supp (1) SCC 335***.

8. On the facts, I find that the petitioners have made out a case that they were in possession over the aforesaid piece of land. They have also produced rent receipt in respect of Khata no.1097 and 1080 relating to 1439, 1440, total area 4



acres 75.6 decimal 0 hectare (AnnexureP/1) in respect of three financial years starting from the year 2018 to 2022. The petition filed under Section 144 of the Cr.P.C. by the opposite parties don't contain any description or any information, as to whether, the opposite parties have paid any rent receipt in respect of the said piece of land to show their possession. At the same time, there is no discussion in the order impugned by the SDO in respect of any evidence shown on behalf of the opposite parties. I find that the SDO in exercise of his jurisdiction in most *malafide* manner has proceeded to pass an order under influence. Based on the similar facts, I find that the law laid down by the Apex Court in case of **Ashok Kumar (Supra)** almost supports the case of the petitioners and in this regard, I find it apt to place the observation made in para-13 to 16 of the judgment passed by the Apex Court, which is as under:

“13. The ingredients necessary for passing an order under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

14. We find from this case there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that



one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant – Ashok Kumar, whether it is legal or not, is not for the SDM to decide.

15. We also notice that the respondent herein has filed a civil suit for injunction before Civil Judge (J.D.) Haridwar on 02.09.2009 and an application for interim injunction is also pending, on which the civil court has issued only a notice. An Amin report was called for and Amin submitted its report on 21.11.2009. Civil suit was filed prior in point of time, it is for the civil court to decide as to who was in possession on the date of the filing of the suit. In any view, there is nothing to show that there was an emergency so as to invoke the powers under Section 146(1) to attach the property, specially, when the civil court is seized of the matter. Under such circumstances, we are inclined to set aside the order passed by the SDM dated 25.11.2009 and the order of the High court dated 27.03.2012.

16. Learned counsel appearing for the appellant submitted that he will not change the character of the property or create third party rights in respect of the property in question till the civil court passes final orders on the application filed by the respondent for temporary injunction. The submission of the learned counsel is recorded and we direct the civil court to pass final orders on the interim application filed by the respondent for injunction. We make it clear that we have also not expressed any final opinion on the contentions raised by the learned counsel. We have however found that no ground exists to attach the property under Section 146, Cr.P.C.”

9. Considering the submission made on behalf of the parties, materials available on record, and the law laid down by the Apex Court as discussed above, the order dated 07.05.2024 passed by the Sub-Divisional Officer, Sadar, Darbhanga is **set-aside and quashed**.

10. The quashing application stands disposed of.

11. Before parting with this matter, this Court deems it necessary to observe that the Sub-Divisional Officer and the Circle Officer must refrain from acting in an arbitrary or high-handed manner. The Additional Chief Secretary, Revenue



Department, Government of Bihar, is directed to remain vigilant and ensure that officials under his jurisdiction must not oppress the ordinary citizens to face malicious prosecution.

(Purnendu Singh, J)

Sanjay/-
Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.09.2025
Transmission Date	NA

