

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48244 of 2017

1. Raj Kumar Sah
2. Niranjan Sah. Both sons of Shri Suresh Sah, Resident of Village- Puraini, P.O. and P.S.- Puraini, District Muzaffarpur.
3. Md. Murtuza, Son of Late Safiruddin, Resident of Village- Yogiraj, P.O.- Nayatola, P.S. Puraini, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Razaque, Son of Late Md. Zahiruddin, Resident of Village- Yogiraj, P.O.- Nayatola, P.S. Puraini, District- Madhepura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shyam Sunder Pandey, Advocate Mr. Ashok Kumar Sinha, Advocate
For the State	:	Mr. Md. Fahimuddin, APP
For the O.P. No.2	:	Mr. Uday Chand Prasad, Advocate Mr. Manoj Kumar, Advocate Ms. Pooja Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

8 23-04-2026 1. Heard learned counsel for the petitioners as well as learned counsel for the O.P. No.2 and learned APP appearing for the State.

2. The present application has been filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') for quashing of the entire proceeding initiated under Section 145 Cr.P.C., including the order dated 12.08.2017 passed by the learned S.D.O., Udakishunganj, Madhepura in Misc. Case No. 505 of 2017, whereby the proceeding under Section 144 Cr.P.C.



was converted into under Section 145 Cr.P.C. and the parties were directed to file their written statements, documents, and adduce evidence in support of their respective claims, despite the admitted pendency of Title Suit No. 144 of 2008 before the Court of learned Sub-Judge, Madhepura concerning the same subject matter of dispute.

3. The brief facts of the case, as borne out from the record, are that a dispute arose between the parties with respect to the land in question, which initially led to initiation of proceedings under Section 144 Cr.P.C. on the basis of a police report apprehending breach of peace. The said proceeding, being Case No. 917 of 2013, was dropped upon expiry of the statutory period. Subsequently, at the instance of O.P. No. 2, another proceeding under Section 144 Cr.P.C. was initiated *vide* Misc. Case No. 69 of 2016, wherein both parties appeared and filed their respective show cause petitions. Upon consideration of the materials placed on record, including documents relating to title and possession, the learned S.D.O. *vide* order dated 19.03.2016 held the petitioners to be in possession over the disputed land and vacated the order against them. It is further the case of the petitioners that yet again, for the same subject matter and between the same parties, another proceeding under



Section 144 Cr.P.C. was initiated being Misc. Case No. 505 of 2017, wherein both parties appeared and filed their show cause. The petitioners reiterated their claim of title and possession and also brought to the notice of the learned S.D.O. the pendency of Title Suit No. 144 of 2008 before the competent civil Court. However, without advertng to the said aspect, the learned S.D.O. *vide* order dated 12.08.2017 converted the proceeding under Section 144 Cr.P.C. into one under Section 145 Cr.P.C., which is under challenge in the present application.

4. Learned counsel for the petitioners submits that the impugned order dated 12.08.2017 passed by the learned S.D.O., Udakishunganj, converting the proceeding under Section 144 Cr.P.C. into one under Section 145 Cr.P.C., is wholly illegal, arbitrary and without jurisdiction. He submits that for the very same subject matter and between the same parties, earlier proceedings under Section 144 Cr.P.C. had been initiated on more than one occasion, and in the subsequent proceeding being Misc. Case No. 69 of 2016, the learned S.D.O., upon due consideration of the materials on record, had categorically found the petitioners to be in possession over the disputed land. It is further submitted that initiation of yet another proceeding amounts to re-litigation of the same issue, which is



impermissible in law.

5. Learned counsel for the petitioner further submits that a Title Suit bearing No. 144 of 2008 with respect to the same land is already pending before the competent civil Court, wherein the issues relating to title and possession are directly involved and are being adjudicated. It is submitted that in view of the pendency of the civil suit, the continuation of the proceeding under Section 145 Cr.P.C. is unwarranted and amounts to parallel adjudication, which is an abuse of the process of the Court. Learned counsel thus submits that the impugned order as well as the entire proceeding deserve to be quashed in exercise of inherent jurisdiction of this Court.

6. Learned counsel for O.P. No. 2 and learned APP for the State conceded that Title Suit bearing No. 144 of 2008 with respect to the same land is already pending before the competent civil Court and submits that the present case may be disposed of accordingly.

7. Having heard the learned counsel for the parties as well as learned APP for the State and on perusal of the materials available on record, this Court finds that the scope of interference under Section 482 of the Cr.P.C. is well settled. The inherent jurisdiction of this Court is to be exercised sparingly,



with circumspection and in the rarest of rare cases, to prevent abuse of the process of the Court or to secure the ends of justice. It is equally settled that where the continuation of a criminal proceeding amounts to misuse of the judicial process or where the proceeding is manifestly attended with *mala fide* and instituted with ulterior motive, this Court would be justified in exercising its inherent powers to quash the same.

8. At this stage, it is appropriate to mention that the law is well settled with respect to proceedings under Section 145 Cr.P.C., as they are of a preventive nature and are intended only to maintain public peace by determining actual possession on the date of the preliminary order, without adjudicating upon the rights and title of the parties. It is equally settled that where a competent civil Court is already seized of the dispute relating to title and possession of the same property, initiation or continuation of parallel proceedings under Section 145 Cr.P.C. should ordinarily be avoided, particularly when there is no imminent apprehension of breach of peace.

9. It is further a settled principle that the jurisdiction under Sections 144 and 145 Cr.P.C. cannot be invoked repeatedly for the same cause of action once the matter has been adjudicated, unless there is a fresh situation giving rise to a new



apprehension of breach of peace. The Executive Magistrate is required to record a clear and specific satisfaction regarding such apprehension before initiating or converting the proceedings. In absence of such satisfaction, the order would be rendered without jurisdiction.

10. Moreover, it is a trite law that the inherent powers of the High Court under Section 482 Cr.P.C. can be exercised to prevent abuse of the process of the Court and to secure the ends of justice. Where the criminal proceeding is found to be manifestly attended with *mala fide* or instituted with an ulterior motive, or where continuation of such proceeding would result in miscarriage of justice, the High Court would be justified in quashing the same.

11. The Hon'ble Supreme Court in ***Ram Sumer Puri Mahant v. State of U.P. and Ors.***, reported in ***(1985) 1 SCC 427***, has observed as under:

“2.When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for Respondents 2-5 was not in a position to challenge the proposition that parallel



proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached.....”

12. Furthermore, the Hon’ble Supreme Court in ***Amresh Tiwari v. Lalta Prasad Dubey and Anr.***, reported in ***(2000) 4 SCC 440*** has dealt with the view as held by the Hon’ble Apex Court in ***Ram Sumer Puri Mahant (supra)***, as herein under:

“13. We are unable to accept the submission that the principles laid down in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over



meaningless litigation. On this principle it has been held that when possession is being examined by the civil court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.

14.We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate.”

13. Moreover, the Hon’ble Supreme Court in ***Mohd. Abid and Ors. v. Ravi Naresh and Ors.***, reported in **2022 SCC OnLine SC 2416** has observed with respect to the proceeding under Section 145 Cr.P.C. as under:

“4.Once the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end. The inter-se rights of the parties regarding title or possession are eventually to be determined by the Civil Court.”

14. In the present case, upon consideration of the materials on record, it transpires that the dispute between the



parties pertains to a specific parcel of land, which has been the subject matter of repeated proceedings under Section 144 Cr.P.C. initiated at the instance of O.P. No. 2. It further appears that in an earlier proceeding being Misc. Case No. 69 of 2016, the learned S.D.O., after hearing both sides and considering the documents brought on record, had recorded a finding with respect to possession in favour of the present petitioners and the said proceeding was accordingly concluded. Despite the same, another proceeding for the very same land and between the same parties was again initiated, which indicates a repetitive invocation of the preventive jurisdiction of the Executive Magistrate.

15. It is also not in dispute that a Title Suit bearing No. 144 of 2008 is pending before the competent civil Court with respect to the same property, wherein the question of title and possession is directly in issue. In such circumstances, initiation of successive proceedings under Section 144 Cr.P.C. and conversion thereof into a proceeding under Section 145 Cr.P.C. appears to be unwarranted, particularly when the competent civil Court is already seized of the matter.

16. Furthermore, from the impugned order, this Court finds that there is no specific satisfaction recorded by the



learned S.D.O. regarding the existence of a present and imminent apprehension of breach of peace, which is a *sine qua non* for initiation of proceedings under Sections 144 and 145 Cr.P.C.

17. In view of the facts and circumstances of the present case and the settled legal position, this Court is of the considered opinion that the impugned order dated 12.08.2017 and the consequent proceeding under Section 145 Cr.P.C. cannot be sustained in the eyes of law. It is evident that for the same subject matter and between the same parties, repeated proceedings have been initiated without any fresh material indicating imminent breach of peace. Further, the pendency of Title Suit No. 144 of 2008 before the competent civil Court, wherein the issue of title and possession is directly involved, has not been properly appreciated by the learned S.D.O. The impugned order thus reflects a mechanical exercise of jurisdiction and results in abuse of the process of law, warranting interference by this Court in exercise of its inherent powers.

18. Accordingly, the entire proceeding under Section 145 Cr.P.C., including the impugned order dated 12.08.2017 passed by the learned S.D.O., Udakishunganj, Madhepura in



Misc. Case No. 505 of 2017, is hereby quashed. However, it is made clear that the parties shall be at liberty to agitate their rights before the competent civil Court, and any observation made herein shall not prejudice the merits of the pending civil proceedings.

19. Resultantly, the present Criminal Miscellaneous Application stands allowed.

20. Let a copy of this order be communicated to the Court concerned forthwith for information and needful.

(Sunil Dutta Mishra, J)

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