IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2030 of 2026

Guru Hembrom, aged about 60 years, Son of Late Barka Hembrom, resident of Village- Gaibathan, Post- Patharghatta, P.S.- Maheshpur, District- Pakur (Jharkhand).

… Petitioner

Versus

1. The State of Jharkhand.
2. Amin Hembrom, son of Late Mandal Hembrom
3. Rajan Hembrom,
4. Babuji Hembrom,
5. Devilal @ Dinesh Hembrom, no.3 to 5 are sons of Amin Hembrom; No. 2 to 5 residents of Village Gaibathan, Post- Patharghatta, P.S.- Maheshpur, District- Pakur (Jharkhand).

… Opposite Parties

For the Petitioner : Mr. Rajeeva Sharma, Sr. Advocate.
Mr. Ritesh Kumar, Advocate.
Mr. Om Prakash, Advocate.
Ms. Maksuda Khatun, Advocate
For the State : Mr. Sunil Kr. Dubey, Addl.P.P.
For the O.P. No.2 to 5: Mr. Gautam Kumar, Advocate.
Mr. Manoj Kumar, Advocate.
Mr. Ashutosh Kr. Sinha, Advocate.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:-

I.A. No.14843 of 2026

Heard the parties.

Learned counsel for the petitioner submits that this interlocutory application has been filed for early hearing of this Criminal Miscellaneous Petition.

Since the matter is taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.2030 of 2026

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the B.N.S.S., 2023 with the prayer to quash the order dated 25.03.2026 passed by learned Additional Sessions Judge-I, Pakur in Cr. Revision No. 79 of 2025 whereby and whereunder the learned Additional Sessions Judge-I, Pakur has set aside the order dated 12.09.2025 passed by the learned Sub-Divisional Magistrate, Pakur in Cr. Misc. Case No. 422 of 2025 whereby the learned Sub-Divisional Magistrate, Pakur converted the proceeding under Section 163 of the B.N.S.S., 2023 to a proceeding under Section 164 of the B.N.S.S, 2023 which corresponds to Section 145 of the Cr.P.C. on the ground that the said order was passed without hearing the parties.

3. It is submitted by the learned senior counsel for the petitioner that the conversion of a proceeding under Section 163 of the B.N.S.S., 2023 at the most gives rise to fresh proceeding under Section 164 of the B.N.S.S. 2023 and since for initiating a proceeding under Section 164 of the B.N.S.S. 2023 itself no prior notice to the other of the parties is required so no illegality has been committed by the learned Sub-Divisional Magistrate, Pakur in converting the proceeding under Section 163 of the B.N.S.S., 2023 to Section 164 of the B.N.S.S., 2023 as the *sine qua non* of such proceeding, is the apprehension of breach of peace and the same has been recorded by the Sub-Divisional Magistrate, Pakur based upon the documents and the show-cause filed by the parties. It is next submitted by the learned senior counsel for the petitioner that after the

proceeding under Section 163 of the B.N.S.S., 2023 got converted into proceeding under Section 164 of the B.N.S.S., 2023, the requirement of Section 164 of the B.N.S.S. 2023 *i.e.* giving opportunity to the parties to produce evidence is to be given by the learned Sub-Divisional Magistrate, Pakur or the successor Court to which it has been transferred before a final order under Section 164 of the B.N.S.S. 2023 is passed. Hence, it is submitted that the learned Additional Sessions Judge-I, Pakur has committed a grave illegality by setting aside the order dated 12.09.2025 passed by the learned Sub-Divisional Magistrate, Pakur in Cr.Misc. No. 422 of 2025. It is lastly submitted that the prayer as made in this criminal miscellaneous petition be allowed.

4. Learned Additional Public Prosecutor as well as learned counsel for the opposite party no.2 to 5 has vehemently opposes the prayer and submit by relying upon the judgment of Hon'ble Patna High Court in the Case of **Ajit Kumar V. State of Bihar** passed in **Cr. Misc. No. 34575 of 2012** dated **09.03.2015** that as in that case, in the absence of apprehension of breach of peace on account of the *bona fide* land dispute, the Magistrate converted the proceeding under Section 144 of Cr.P.C. to Section 145 of the Cr.P.C.; it was held by the Hon'ble Patna High Court that the same is abuse of process of law. It is next submitted that before conversion of the proceedings under Section 163 of the B.N.S.S., 2023 to a proceeding under Section 164 of the B.N.S.S., 2023, the Sub-Divisional Magistrate, Pakur ought to have given a full-fledged opportunity of being heard to the parties and having not done so, the learned Additional Sessions Judge, I, Pakur has rightly set aside the

same. Hence, it is submitted that this Cr.M.P. being without any merit be dismissed.

5. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the Hon'ble Division Bench of Odisha High Court had the occasion to consider the conversion of the proceeding under Section 144 of the Cr.P.C. to 145(1) of the Cr.P.C. in the case of ***Padma Charan Behera & Others vs. Prafulla Chandra Naik & Others*** in its judgment dated 20.12.1974 reported in **1974 O Supreme (Ori) 104** and also in 1975 CrLJ 1190 summed up as under:-

> *"(i) The Magistrate gets jurisdiction to initiate proceeding under Section 145, Criminal Procedure Code on his having satisfaction that there is apprehension of breach of peace relating to immovable property. The jurisdiction to initiate the proceeding does not depend on the manner in which he drew up the initial order.*
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> *(ii) Failure to draw up a formal preliminary order under Section 145(1) is a mere irregularity and does not affect the question of Jurisdiction. Such a proceeding is not liable to be quashed unless prejudice is shown and unless such an objection is taken at the earliest opportunity as proscribed in Section 537, Criminal Procedure Code.*
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> *(iii) If the initial order is not challenged as being without jurisdiction and the party files written statement enters into evidence and awaits till the off chance of getting a favourable judgement, he cannot be allowed to assail the final order.*
>
> *(iv) Where a Magistrate initiates a proceeding under Section 144, Criminal Procedure Code in respect of immovable property while he ought to have initiated a proceeding under Section 145 the party would not be allowed to suffer and the date of initiation of the proceeding under Section 144, Criminal Procedure Code shall*

be treated as the date of the preliminary order under Section 145(1)."

this Court is in agreement with the conclusions arrived at by the Hon'ble Division Bench of Odisha High Court in respect of answers of the questions formulated.

6. It is crystal clear that when a Magistrate initiates a proceeding under Section 144 of the Cr.P.C. in respect of immovable properties while he ought to have initiated a proceeding under Section 145(1) of the Cr.P.C., the party would not be allowed to suffer and the date of initiation of proceeding under Section 144 of the Cr.P.C. shall be treated as the date of preliminary order under Section 145(1) of the Cr.P.C.; When a proceeding under Section 144 of the Cr.P.C. gets converted to a proceeding under Section 145 of the Cr.P.C.

7. It is the settled principle of law that as evident from verbatim Section 164 of the B.N.S.S., 2023 that the Executive Magistrate need not hear the parties before initiating a proceeding under Section 164 of the B.N.S.S. 2023 and the sine qua non for initiating a proceeding under Section 164 of the B.N.S.S. 2023 is the existence of apprehension of breach of peace relating to a land dispute. So far as the contention of the opposite party no.2 to 5 that the parties must have been heard before converting the proceeding under Section 163 of the B.N.S.S., 2023 to proceeding under Section 164 of the B.N.S.S., 2023 is concerned; the facts of the case reveal that on the 59th day of the initiation of the proceeding under Section 163 of the B.N.S.S. 2023, it appeared to the learned S.D.M., Pakur that it is not possible to conclude the proceeding under Section 163 B.N.S.S. 2023 within maximum period stipulated for

such proceeding, being two months but the apprehension of breach of peace was subsisting in connection with land dispute between the parties. So under such circumstances as he has converted the proceeding under Section 163 of the B.N.S.S. 2023 to the proceeding under Section 164 of the B.N.S.S., 2023, in the considered opinion of this Court, hearing the parties before passing such order is not essential, but after conversion of the proceeding under Section 164(1) of the B.N.S.S. 2023, the learned Executive Magistrate concerned has to follow all the procedures of the proceeding under Section 164 of the B.N.S.S. 2023 as if a new proceeding has been initiated by giving opportunity to the parties to put in written statements of their respective claims in respect of the fact of actual possession of the subject of dispute and other provisions of Section 164 of the B.N.S.S., 2023.

8. Under such circumstances, since the order dated 12.09.2025 passed in Cr. Misc. Case No. 422 of 2025 by the learned S.D.M., Pakur itself goes to show that there was subsisting apprehension of breach of peace in respect of a land dispute between the parties hence, the learned Additional Sessions Judge-I, Pakur has committed a grave illegality by setting aside the same on the ground that parties have not been provided with the opportunity to place their case. Hence, in the considered opinion of this Court, the impugned order dated 25.03.2026 passed in Criminal Revision No. 79 of 2025 by the learned Additional Sessions Judge-I, Pakur, is not sustainable in law. Accordingly, the same is quashed and set aside.

9. In the result, this criminal miscellaneous petition is allowed to the aforesaid extent only.

10. In view of the disposal of this criminal miscellaneous petition, pending Interlocutory Application, if any is also disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 27th October, 2026
AFR/ Amar

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