
(2018) 07 PAT CK 0009

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No.2343 of 2017

Amrendra Jha @ Amrendra Kumar Jha

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 144
Constitution of India, 1950 — Article 226

Citation : (2018) 07 PAT CK 0009

Hon'ble Judges : RAJEEV RANJAN PRASAD, j

Bench : Single Bench

Advocate : Pankaj Kumar Jha, Sheo Shankar Prasad

Final Decision : Disposed off

Judgement

Heard learned counsel for the petitioner, learned counsel representing the private respondent as also learned counsel representing the State.

In the nature of the facts and circumstances of this case, the petitioner has been able to make out a case for interference by a constitutional court in

exercise of its power under Article 226 of the Constitution of India. The facts brought on record and which have been placed before this court are not

in dispute. The private respondents have lost title suit as also the appeal arising out of that in respect of Plot No. 1044(P) under Khata No. 317 and

Plot No. 1685 under Khata No. 1244 both falling in Mauza Hirani, P.S. â?" Kusheshwar Asthan admeasuring area 2 Bighas and 8 Kathas 17 Dhooors

respectively.

The grievance of the petitioner is that despite the fact that the petitioner is in possession of the land and the private respondents have lost up to the

stage of appeal, at the instance of the private respondents, the S.H.O.,

Kusheshwar Asthan Police Station, Darbhanga use to send a police report to the court of learned Sub-Divisional Magistrate and based on that report the Sub-Divisional Magistrate issues notice under Section 144 of the Code of Criminal Procedure.

It is submitted that repeated issuance of notice under Section 144 Cr.P.C. is nothing but an abuse of the process of law and a sheer harassment to the petitioner. The attention of this court has also been drawn to the various orders passed by this court in CWJC No. 682/1996, CWJC No. 2727/1998, CWJC No. 1114/2007 and CWJC No. 11153/2006 which have been enclosed as Annexure-1 series to the writ application. The submission is that perusal of these orders would show that on different occasions this court has held that the private respondents cannot disturb the possession of the petitioner/his common ancestor and no relief could be granted to the private respondents even though several attempts were taken by filing one after another several writ applications before this court.

Learned counsel has brought to the notice of this court that earlier a proceeding under Section 144 Cr.P.C. was initiated giving rise to Case No.

396/2017 which was dropped by order dated 12.08.2017 placed as Annexure-4 to the writ application, but immediately thereafter on the basis of a

police report another proceeding under Section 144 Cr.P.C. giving rise to Case No. 567/2017 was initiated in the court of Sub-Divisional Magistrate,

Biraul, Darbhanga. This case has now been dropped vide its order dated 01.12.2017. While issuing notice to the private respondents this Court called

for personal affidavit of the Officer-in-Charge, Kusheshwar Asthan, Police Station (Respondent No. 5) and his personal appearance was called for.

These facts duly supported by the materials placed on record have been brought to the notice of this court to contend that the manner in which one

after another reports are being submitted by the S.H.O. of the Kusheshwar Asthan Police Station and based on that a proceeding under Section 144

Cr.P.C. is initiated, the petitioner and his family are getting harassed, and, therefore, this court has been called upon to protect the petitioner and his

family from further harassment.

Learned counsel representing the private respondents initially attempted to argue on the merit of the claim of the private respondents with respect to

the land but very soon he could realize that having failed to prove his case before

the competent court and up to the appellate stage, he did not insist with his submissions. It is not in dispute that the petitioner is in possession of the land, the grounds on which private respondents are seeking their claim have not been found favour with by the court of competent jurisdiction up to the appellate stage, and, therefore, whatsoever ground may have with the private respondents claiming the title and interest in the land in question, this court would not go into that issue.

Learned counsel for the State submits that the S.H.O. of the Police Station has now filed an affidavit and steps are being taken to maintain law and order as has been directed earlier also by this court in CWJC no. 11153/2006 vide order dated 10.07.2007. In the said order the undertaking of respondent Nos. 3, 5 & 6 were recorded to the extent that they have taken adequate steps in law to maintain the law and order and legal title and possession of the petitioner over the land in question.

Having heard learned counsel for the parties and upon perusal of the record this court would not hesitate in recording that the repeated submission of

police report recommending initiation of a proceeding under Section 144 Cr.P.C. by the S.H.O. of the police station is wholly illegal, arbitrary and is

prima facie indicating the fact that he is exercising his power without there being any basis to submit such a report. The repeated initiation of

proceeding under Section 144 Cr.P.C. against the petitioner or his ancestor has definitely caused harassment to the petitioner and for causing such

harassment the court was willing to impose some cost against the S.H.O. of Kusheshwar Asthan Police Station, but at this stage this matter is being

disposed of by recording a word of "caution" to the S.H.O. Kusheshwar Asthan Police Station not to involve himself in preparing a kind of

baseless report which may give rise to yet another proceeding under Section 144 Cr.P.C. and doing the further case of harassment to the petitioner

and his family. This court has indicated the kind of undertaking which was given before this court in CWJC No. 11153/2006 disposed of on 10.07.2007

and would reiterate that the S.H.O., Kusheshwar Asthan Police Station will while maintaining the law and order and legal title and possession of the

petitioner over the land in question except as provided in law, will not do any such act which may result in undue harassment to the petitioner and his

family.

The writ application stands disposed of, accordingly.