
(2016) 01 JH CK 0161
In the Jharkhand High Court
Case No : Cr.M.P. No. 1606 of 2010

Babu Lal Bediya and others	Vs	APPELLANT
State of Jharkhand and another		RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 146(1), 482

Citation : (2016) 1 JBCJ 502

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Vandana Bharti, Addl. P.P, for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J. - Heard Mr. Prabhat Kumar Sinha, learned counsel for the petitioner, Mrs. Vandana Bharti, learned APP for the State and Mr. Suresh Kumar, learned counsel for the opposite party No. 2.

2. In this application, the petitioners have prayed for quashing the order dated 26.8.2009 passed by learned Executive Magistrate, Ramgarh u/s 146(1) Cr.P.C. for attachment of land under dispute till disposal of the proceeding in Case No. 25/2009 filed u/s 145 Cr.P.C. (Code of Criminal Procedure). A further prayer has been made for quashing the order dated 28.8.2010 passed by learned Sessions Judge, Hazaribagh in Criminal Revision No. 227 of 2009 by which order dated 26.8.2009 passed by the learned Executive Magistrate, Ramgarh has been affirmed.

3. At the instance of the opposite party No. 2, a case was registered u/s 145 Cr.P.C. being Case No. 25 of 2009 against the petitioner. On 25.5.2009, an order was passed by the learned Sub Divisional Magistrate, Ramgarh directing both the parties to file their respective written statements along with documents with respect to their claim over the land in dispute. It appears that subsequent to the filing of the written statement by the opposite party No. 2/ applicant u/s 146(1)

Cr.P.C. and rejoinder thereto by the second party/ petitioners and after hearing the parties, the learned Executive Magistrate, Ramgarh has passed order dated 26.8.2009 directing for attachment of the land in dispute in connection with Case No. 25 of 2009. A revision was preferred against the order dated 26.8.2009 passed by the learned Executive Magistrate, Ramgarh being Criminal Revision No. 227 of 2009 which was also dismissed vide order dated 28.8.2010.

4. It has been submitted by the learned counsel for the petitioners that the order dated 26.8.2009 as well as the order dated 28.8.2010 has been passed without taking into consideration the provisions of Section 146(1) of the Cr.P.C. It has further been submitted that an order of attachment can be passed under three circumstances- (i) if it be a case of emergency, or (ii) if it is decided that none of the parties was in such possession, or (iii) if it cannot be decided as to which of them was in possession. Learned counsel further submits that the learned Executive Magistrate, Ramgarh has merely indicated about the breach of peace, but he has not given any reason whether it was a case of emergency so as to attach the land in dispute. Learned counsel further submits that the same is against the principles of law. In this context, he has referred to the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar v. State of Uttarakhand reported in (2012) 8 Supreme 737. Learned counsel has further submitted that in fact the father of the opposite party No. 2, namely, Bhutka Bediya has preferred an application for cancellation of Jamabandi which was in the name of father of the petitioner No. 1, but the said case, which was registered as Misc. Case No. 16/2000-01, was rejected vide order dated 22.8.2001 by learned LRDC, Ramgarh. An appeal was preferred against the said order dated 22.8.2001 and the same was also dismissed vide order dated 6.5.2003. It has further been submitted that the orders passed by the learned LRDC as well as the Additional Collector, Hazaribagh go to show that the petitioners were in possession of the land in question. In such circumstances, learned counsel submits that the impugned orders dated 26.8.2009 and 28.8.2010 deserve to be quashed and set aside.

5. At this, learned counsel for the opposite party No. 2 has submitted that the police report, which was called for by the Executive Magistrate, Ramgarh, clearly speaks about the apprehension of breach of peace and blood shed between both the sides. The disputed land has been claimed by both the sides and since the element for attachment u/s 146(1) of the Cr.P.C. has been fulfilled, no infirmity or illegality can be found with the order dated 26.8.2009 as well as the revisional order dated 28.8.2010.

6. Perusal of the impugned order dated 26.8.2009 reveals that the learned Executive Magistrate, Ramgarh had taken into consideration the report submitted by the Officer-in-Charge, Bhadani Nagar P.S. with respect to the disputed land wherein it was categorically stated that there was chances of blood shed on account of dispute between both the sides. Considering this fact as well as the fact that there was a dispute with respect to the possession of the land in

question, the order of attachment was passed by the learned Executive Magistrate, Ramgarh vide order dated 26.8.2009. The Revisional Court in Criminal Revision No. 227 of 2009 affirmed the order passed by the Executive Magistrate, Ramgarh. The impugned orders do suggest that the necessary criteria for attachment of property u/s 146(1) Cr.P.C. had duly been taken note of by the Executive Magistrate, Ramgarh and pursuant to which the order of attachment was passed.

7. The submission of the learned counsel for the petitioners that the Executive Magistrate has merely mentioned about the breach of peace and has not given any reason explaining the circumstances so as to come within the ambit of emergency situation which is contrary to the decision of the Hon'ble Supreme Court in the case of Ashok Kumar (Supra), but as would be evident from the order impugned, the learned Executive Magistrate, Ramgarh has not only given finding with respect to breach of peace and blood shed between both the sides and but also relied upon the report of the Bhadani Nagar P.S. which clearly suggest that there were chances of breach of peace and blood shed.

8. I find no infirmity either with the order dated 26.8.2009 passed by learned Executive Magistrate, Ramgarh or with the order dated 28.8.2010 passed by learned Sessions Judge, Hazaribagh in Criminal Revision No. 227 of 2009. Accordingly, this application, being devoid of merit, is hereby dismissed.

9. However, since it has been submitted that a proceeding u/s 145 Cr.P.C. being Case No. 25 of 2009 is still pending before the Executive Magistrate, Ramgarh, he is directed to dispose of the case expeditiously within a period of three months from the date of receipt/ production of a copy of this order.