
(1996) 05 OHC CK 0006

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2821 of 1995

Bidyadhar Sahoo

APPELLANT

Vs

Sanjay Kumar Dalei and Others

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (1996) 82 CLT 702 : (1996) 2 OLR 198

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R.N. Naik, R. Rath, B.S. Tripathy, A. Deo, D.K. Sahu, J.K. Mishra and N.P.J. Ray, for the Appellant; Y.A. Rahim, A. Yusuf, B.P. Panda, B. Dash and N. Mallick, for the Respondent

Judgement

P.K. Misra, J.—The first party member in a proceeding u/s 144 of the Code of Criminal Procedure (hereinafter referred to as the "Code") has filed this application u/s 482 of the Code for quashing the order dated 7-10-1996 passed by the Sub-Divisional Magistrate, Dhenkanal, in Criminal Misc. Case. No. 249 of 1995.

2. On 27-9-1995 on the basis of a petition-cum-affidavit filed by the present petitioner, the Sub-Divisional Magistrate, Dhenkanal, initiated a proceeding u/s 144 of the Code and passed a restraint order restraining the second party members and their henchman from going upon the disputed land. The second party members after receiving notice filed their show-cause. Though the case had originally been fixed to 11-10-1995, the Sub-Divisional Magistrate, on the basis of a petition filed by the second party members, took up the matter on 7-10-1995 and passed order rescinding the order dated-27-9-1995. The first party member approached this Court on 17-10-1995 challenging the aforesaid order dated 7-10-1995 on the ground that the said order was passed behind the back of the first party without affording any opportunity of hearing.

3. There cannot be any doubt that the said order dated 7-10-1995 was illegal, as

it was passed without giving an opportunity of hearing to the first party. The proceeding itself had been started on the basis of the petition of the first party and any order prejudicially affecting the first party should have been passed only after giving an opportunity of hearing to the first party. There is thus no difficulty in stating that the order dated 7-10-1995 was illegal and deserves to be quashed. However, it appears that after 7-10-1995, the matter was taken up on 25-10-1995, when the Sub-Divisional Magistrate passed an order to drop the proceeding u/s 144 of the Code. The said order also appears to have been passed without hearing any party, particularly the first party member. Though the legality of the said order has not been challenged, the correctness of the said order can be examined by the High Court in exercise of suo motu revisional power. However, I find that more than two months have expired from the date of the preliminary order i. e. 27-9-1995 and as such in view of the provision u/s 144(4) of the Code, the order u/s 144 itself has expired as admittedly no order extending the period has been passed by the State Government under the proviso to Section 144(4) of the Code. Since two months' period is already over, no useful purpose would be served by delving into the question. Accordingly, this Criminal Misc. Case is disposed of as being infructuous as the proceeding u/s 144 of the Code has come to an end by efflux of time. In view of this order. Misc. Case No. 1176 seeking for stay of operation of the impugned order is also disposed of as being infructuous.

4. Before parting with the case, I would like to mention that in this case, the matter was listed for admission on 1-11-1995. By then order dated 25-10-1995 dropping the entire proceeding u/s 144 of the Code had been passed and yet that was not brought to the notice of the Court, nor its legality was challenged. The case was admitted on 1-11-1995 and stay order was passed on that day. Even though the petitioner did not file requisites for issuing notice to the opposite parties, certified copy of the order was granted as directed by the Court and the petitioner conveniently omitted to file requisites till 20-12-1995. When the matter was listed on 20-12-1995, the petitioner prayed for time till one week after winter vacation for filing requisites. In other words, after obtaining the stay order, the petitioner conveniently delayed the proceeding for a pretty long period. A party invoking the jurisdiction of the High Court u/s 482 of the Code owes a duty to the Court. The power u/s 482 is meant to prevent abuse of the process of the Court. A party invoking such power should not himself try to abuse the process of the Court by adopting dilatory tactics. Even the registry of the High Court has not been sufficiently careful in the matter and did not list the matter for more than one and half months after 1-11-1995. The office should have been careful enough to see that urgent matters involving rights of parties are promptly dealt with.

Subject to the aforesaid observations, the Criminal Misc. Case is disposed of.