
(2007) 09 PAT CK 0146

In the Patna High Court

Case No : Criminal Miscellaneous No. 23552 of 2006

Brahma Nand Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 144(4), 145, 482

Citation : (2008) 1 PLJR 726

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Rajni Kant Jha, for the Appellant; Jharkhandi Upadhaya for the State and Mr. Dharendra Kumar "Munna" for the O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—The petitioner herein who is one of the members of the second party in a proceeding u/s 144 Cr.P.C., being Case No. 87/2004, which was later converted into a proceeding u/s 145 Cr.P.C. is aggrieved by and seeks the quashing of order dated 22.12.2005 passed therein by Sri M.A. Rahman, Executive Magistrate, Banka, whereby he has rejected the petitioner's petition for dropping the proceeding as also the order dated 27.1.2006 passed by the learned Sessions Judge, Bhagalpur, in Criminal Revision No. 20 of 2006 preferred against the order of the learned Executive Magistrate whereby he has dismissed the revision for the impugned order therein being an interlocutory order. It appears that O.P. No. 2 herein filed a petition on 3.6.2003 before the Sub-Divisional Magistrate, Banka, for initiating a proceeding u/s 144 Cr.P.C. restraining the petitioner herein from making any construction over the piece of land in question measuring 2 kathas 8 dhurs appertaining to khata No. 186, Plot Nos. 3382 and 3392. The learned Magistrate called for a report from the concerned police station which was submitted on 3.7.2003 disclosing inter alia, that there was a house on the land in question and that the petitioner herein was living therein as a tenant. It was also revealed that towards the south of the

house was some vacant land over which the present petitioner wanted to construct a room which had been stopped by the police and the situation was peaceful. However, notwithstanding the police report the learned Magistrate, seven months after receipt thereof, in his wisdom, initiated a proceeding u/s 144 Cr.P.C. on 13.2.2004 and noticed both parties to show cause. It further appears that by order dated 13.4.2004 the proceeding was converted into one u/s 145 Cr.P.C. It also transpires that the petitioner herein filed a petition before the learned Magistrate on 25.10.2004 with a prayer to drop the proceeding u/s 145 Cr.P.C. since it was not legal and because the petitioner being in lawful possession of the house in question could not be evicted therefrom in a proceeding u/s 145 Cr.P.C.

2. The learned counsel for the petitioner sought to raise a three pronged attack on the orders impugned. It was first submitted that the conversion of the proceeding from one u/s 144, Cr.P.C. to one u/s 145 Cr.P.C. having been done after the efflux of time prescribed u/s 144(4) Cr.P.C. could not be sustained in law. It was next submitted that the prayer portion of the petitioner filed for initiation of the proceeding clearly indicates that it was for eviction of the petitioner from the house in question and such relief could, not be granted in a proceeding either u/s 144 or 145 Cr.P.C. The third submission was that order dated 22.12.2005 passed by the learned Magistrate could not be classified as an "interlocutory order" since that order decides or touches the rights and liabilities of the parties. According to the learned counsel a valuable right had accrued in his favour by the proceeding u/s 144 Cr.P.C. having terminated automatically by efflux of the statutory period and the Magistrate could not have passed any order thereafter. Hence he was legally entitled to raise this issue and have it decided and the decision would touch his right.

3. The learned counsel for O.P. No. 2 first sought to raise an objection as to the maintainability of the instant application in view of the decision of the Special Bench in Surendra Singh and Others Vs. The State of Bihar and Others, , wherein it was held that an application u/s 482 Cr.P.C. was not maintainable after dismissal of a revision petition. I am unable to agree with the learned counsel in view of the decision in State of U.P. Vs. O.P. Sharma, wherein it was held that when the Court exercises its inherent power the prime consideration should only be whether the exercise of power would advance the cause of justice or it would be an abuse of the process of the Court.

4. The learned counsel for O.P. No. 2 also sought to submit that the petitioner not having challenged order dated 13.4.2004 converting the proceeding cannot now come forward and say that the said order was bad. He has also sought to justify the fact that the order dated 22.12.2005 was indeed an "interlocutory order" as declared by the revisional Court.

5. Having heard the parties I am of the opinion that this application must succeed for the reasons enumerated herein below:-- (a) The power conferred by Section 144 Cr.P.C. is a discretionary one and being extraordinary in nature

should be used sparingly and only where all the conditions prescribed are strictly fulfilled. There is nothing on record to show that there was any apprehended danger, or a disturbance of public tranquility, or riot or an affray. As a matter of fact the police report called for was to the contrary. Had there been any urgency the Magistrate would not have waited for 7 months for initiating the proceeding.

(b) Under sub-section (4) of Section 144 Cr.P.C. an order u/s 144 Cr.P.C. remains statutorily in force for two months from the date of order and terminates automatically on completion of the said period. In the instant case the proceeding was initiated on 13.2.2004 and the period of two months would expire on 12.4.2004. Therefore the learned Magistrate had no jurisdiction to pass any order on expiry of the statutory period and thus the order of conversion passed on 14.4.2004 was non est as the proceeding u/s 144 Cr.P.C. was already dead.

Accordingly as stated above this application succeeds and the impugned orders are hereby quashed.