

(2011) 02 PAT CK 0029

In the Patna High Court

Case No : Criminal Miscellaneous No. 12264 of 2000

Chandra Bhushan Prasad

APPELLANT

Vs

The State of Bihar, Kameshwar Pd. Sinha and Shiveshwar Pd. Sinha

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0029

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole Petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 30.3.2000 passed by the learned 6th Addl. Sessions Judge, Muzaffarpur in Cr. Revision No. 171 of 1999, whereby the learned Addl. Sessions Judge has allowed the revision petition and set aside the order dated 7.7.1999 passed by the learned Sub Divisional Magistrate, East Muzaffarpur in Case No. M 518 of 1991 dropping the proceeding u/s 145(5) of the Code of Criminal Procedure.

2. Short fact of the case is that on the basis of petition filed by Opp. Party No. 2 raising apprehension of breach of peace in respect of the land bearing R.S. Plot No. 60 appertaining to R.S. Khata No. 328, situated at Mohalla Pankhatoli, Muzaffarpur. Initially, a proceeding u/s 144 Code of Criminal Procedure was initiated by the learned Sub Divisional Magistrate, East Muzaffarpur, which was subsequently converted into a proceeding u/s 145 of the Code of Criminal Procedure. In the said proceeding, subsequently, the Petitioner was added as Opp. Party No. 2 being purchaser of the land in question. The Petitioner in the said proceeding filed a petition for dropping the proceeding u/s 145(5) of the Code of Criminal Procedure. In respect of the same land, Opposite 2nd Party and his wife had also filed a suit vide Title Suit No. 200 /91 for declaration of title and permanent injunction in respect of Petitioner's land. In the said suit, the parties had appeared and they were contesting the suit and, as such, the Petitioner filed

a petition u/s 145(5) of the Code of Criminal Procedure to drop the on going proceeding u/s 145 of the Code of Criminal Procedure. Thereafter, the learned Sub Divisional Magistrate called for a report and whereupon Kazi Mohammadpur Police submitted a report on 18.7.1998 to the effect that there was no apprehension of breach of peace over the land in question and, as such, the learned Sub Divisional Magistrate was pleased to drop the proceeding u/s 145(5) of the Code of Criminal Procedure considering the fact that Title Suit was pending in between the parties over the land in question. The learned Sub Divisional Magistrate vide its order dated 7.7.1999 passed in Case No. M 518 of 1991 was pleased to cancel the order of initiation of proceeding u/s 145(5) of the Code of Criminal Procedure. Against the order dated 7.7.1999 passed by the learned Sub Divisional Magistrate, East Muzaffarpur, Opp. Party No. 2 preferred a revision vide Cr. Revision No. 171 of 1999 and the learned 6th Addl. Sessions Judge, Muzaffarpur vide its order dated 30.3.2000 allowed the revision petition and remitted back the matter to the learned Sub Divisional Magistrate, East Muzaffarpur for deciding the proceeding on merit after giving opportunity to all the parties to the proceeding.

3. Aggrieved with the order of the revisional court dated 30 .3.2000 passed by the learned 6th Addl. Sessions Judge, Muzaffarpur, whereby the revision preferred by Opp. Party No. 2 was allowed, the Petitioner approached this Court by filing the present petition. On 19.4.2001 while issuing notice to Opp. Party Nos. 2 and 3, this Court directed that till further order is passed, further proceeding before the Magistrate shall remain stayed and the petition was admitted for hearing on 30.7.2002 . Lower Court record was called for and it was directed that the interim order dated 19.4.2001 shall remain continued. The order of stay is still continuing.

4. Sri B.K. Shukla, learned Counsel for the Petitioner, while questioning the order of the revisional court, has emphatically argued that the learned Sub Divisional Magistrate, East Muzaffarpur after coming to know that a title suit in between the parties in respect of the same land was continuing has rightly passed the order u/ s 145(5) of the Code of Criminal Procedure, whereby the proceeding initiated earlier was cancelled, but the learned Addl. Sessions Judge in revision erroneously quashed the order of the learned Sub Divisional Magistrate and remitted back the matter to the Magistrate for proceeding with the case on merit. Sri B.K. Shukla, learned Counsel for the Petitioner has heavily relied on a Judgment of Hon?ble Supreme Court reported in AIR 2000 SC 1504 Amresh Tiwary v. Lalta Prasad Dubey Sri Shukla, learned Counsel for the Petitioner has further argued that the reason for dropping the proceeding by order dated 7.7.1999 passed by the learned Sub Divisional Magistrate, East Muzaffarpur was not only the pendency of title suit, but on the basis of report of the police officer indicating therein that there were no apprehension of breach of peace and, as such, the learned Magistrate has rightly and legally passed the order u/s 145(5) Code of Criminal Procedure dropping the proceeding. Accordingly, it has been submitted that the order of the revisional court is liable to be set aside.

5. On the other hand, Sri Ranjan Kumar Dubey, learned Counsel appearing on behalf of Opp. Party Nos. 2 and 3 has strongly opposed the prayer of the Petitioner. It was submitted that the learned 6th Addl. Sessions Judge, while remitting back the matter has thoroughly examined the case as well as the case law, which were cited by both the parties and thereafter he has rightly passed the impugned order. Learned Counsel for Opp. Party Nos. 2 and 3 has referred to a judgment reported in Prakash Chand Sachdeva Vs. The State and another, . It was submitted that the Hon?ble Supreme Court has categorically held that merely on the ground of pendency of the Civil Suit a proceeding u/s 145(5) of the Code of Criminal Procedure may not be set aside. Accordingly, he has contended that the learned 6th Addl. Sessions Judge has rightly passed the order remitting back the matter to the learned Magistrate to proceeding with the case in accordance with law.

6. Sri A.M.P. Mehta, learned Addl. Public Prosecutor has appeared on behalf of Opp. Party No. 1, the State of Bihar.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. In this case, fact remains that the proceeding u/s 145 of the Code of Criminal Procedure was dropped by the learned Sub Divisional Magistrate long back on 7.7.1999, which was unsettled by the learned 6th Addl. Sessions Judge, Muzaffarpur in Cr. Revision No. 171 of 1999 vide its order dated 30th March, 2000. The order of the revisional court was directed to be stayed by this Court vide its order dated 19.1.2001 and the stay order is still continuing. Further the fact remains that in respect of declaration of title and possession over the land in question, it is admitted position that in between the parties, a suit vide Title Suit No. 200 of 1991 was pending. Once the suit was pending, there were remedy available to the parties to get interim injunction also and, as such, the Court is of the opinion that in view of pendency of a civil suit regarding title and possession over the land in question, initiation of proceeding u/s 145 of the Code of Criminal Procedure, particularly in the facts and circumstances of the present case was, not warranted and the learned 6th Addl. Sessions Judge, Muzaffarpur was required not to interfere with the order passed by the learned Sub Divisional Magistrate on 7.7.1999 passed in Case No. M 518 of 1991. Besides this, after lapse of more than 10 years from the order passed by the learned Sub Divisional Magistrate dropping the proceeding u/s 145(5) of the Code of Criminal Procedure, it would not be appropriate for this Court to allow the parties to participate in a proceeding u/s 145 of the Code of Criminal Procedure, which was already dropped in the year 1999 and, as such, for the ends of justice, it is desirable to interfere with the impugned order of the revisional court, and as such, order dated 30th March, 2000 passed by the learned 6th Addl. Sessions Judge, Muzaffarpur in Cr. Revision No.171 of 1999 is hereby set aside and the petition stands allowed.