

(2008) 01 PAT CK 0016

In the Patna High Court

Case No : Criminal Miscellaneous No. 19703 of 2006

Deoki Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147, 399(3), 482

Citation : (2008) 2 PLJR 623

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This application u/s 482 Cr.P.C. has been filed for quashing the order dated 30.11.2005 passed by the 4th Addl. Sessions Judge, Nawadah in Cr. Revision No. 14 of 2005/3 of 2005 whereby he has dismissed the revision preferred against the order dated 5.11.2004 passed by the Executive Magistrate. Nawadah in Case No. 35 (M)/1985 and also for quashing the above order passed by the Executive Magistrate. The Executive Magistrate by the impugned order had dropped the proceedings u/s 147 Cr.P.C. initiated on the petition of the petitioner, after due enquiry.

2. The case of the petitioner is that he has house over plot Nos. 232, 233 in Akauna Bazar. There is a Gali (lane) in plot No. 231 and part of plot No. 647 towards north of his house. The door of the house opens to this lane and he has been using the lane as passage. The drain of his house also passes through passage. O.P. No. 2 wants to close the lane disturbing the pre-emptory right of the petitioner and if this is done, his passage and drainage would be blocked and that on account of this dispute regarding use of (and there is likelihood of breach of peace.

3. It appears that after initiation of the proceeding O.P. No. 2 (second party in the proceeding) did not appear nor examine any witness as he was in jail

custody though the petitioner examined a number of witnesses, it further appears that after a long time the second party appeared and filed a written argument and some documents.

4. The learned Executive Magistrate after considering the evidence of the witnesses examined by the first party, the report of the Amin, who had measured the disputed land, and the judgment and decree of Title Suit No. 56 of 1977/26 of 1980 between the mother of the second party and the State of Bihar, passed by the Addl. Sub-Judge-II held that no passage existed on the disputed land. He accordingly dropped the proceeding.

5. The first party then preferred revision against the order and the learned Addl. Sessions Judge by the impugned order dismissed the revision.

6. Counsel for the petitioner submitted that the Amin, who had inspected the disputed land, has indicated in the report the existence of a Rasta which has been closed by OP. No. 2. The other witnesses have also stated that the petitioner had been using that land as passage but the learned Executive Magistrate against the evidence has given a finding that the house of the petitioner does not open to the north of the lane and as such, no passage existed.

7. Learned counsel further submitted that the learned Magistrate should have considered whether right of user was exercised" within three months" next before initiation of the proceeding but he has failed to do so.

8. The contention of the learned counsel hence is that the impugned order of the learned Magistrate is illegal. Consequently the order of the learned Addl. Sessions Judge confirming the order is also illegal.

9. Learned counsel for O.P. No. 2 defended the impugned orders. He further submitted that this application u/s 482 Cr.P.C. is nothing but a second revision application and thus, is not maintainable.

10. It is true that as provided u/s 399(3) Cr.P.C. when any application for revision is made by or on behalf of any person before the Sessions Judge, the decision Of the Sessions Judge thereon in relation to such persons shall be final and no further proceeding by any of the revision at the instance of such person shall be entertained by the High Court. But there is no provision whereunder such person is barred from invoking jurisdiction of the High Court u/s. 482 Cr.P.C. It has been, however, held by the Supreme Court in the case of Ganesh Narayan Hegde Vs. S. Bangarappa and Others, . that in such cases the High Court should not act as a second revisional court under the garb of exercising its inherent power. The High Court should interfere only where it is satisfied that the interest of justice calls for such interference.

11. In this case, hence though the revision of the petitioner has been dismissed by the Addl. Sessions Judge, there is no bar in entertaining the application u/s 482 Cr.P.C. But this Court interfered only when the interest of justice calls for such interference. Section 147 Cr.P.C. is intended to preserve public peace and

not to turn a Magistrate into a civil court for determining the rights of the parties, Dispute concerning right of use of land or water with a present danger of breach of peace and not in future is the foundation of jurisdiction of the Magistrate under this section. But this case is of the year 1985. So, it is more than 20 years old. It is, hence, most unlikely that there was still a danger of breach of peace concerning dispute. So, even if it be assumed that the submission of the Mearned counsel for the petitioner has merit, the interest of justice does not call for any interference with the impugned orders: The petitioner, if so advised, may file a civil suit for adjudication of his right. In the result, this application is dismissed.