
(2006) 02 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 16841 of 2005

Gyandeo Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(5), 482

Citation : (2006) 2 PLJR 181

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application u/s 482 of the Code of Criminal Procedure for quashing the order dated 3.12.2004 passed in Revision Case No. 342/2003 by Addl. Sessions Judge III, Patna by which he has upheld the order dated 22.3.2003 passed by the learned Sub-divisional Magistrate, Sadar Patna in Misc. Case No. 1923(M)/ 1987 whereby he (S.D.M.) has dropped the proceeding u/s 145 Cr. P.C. under the provisions of Section 145(5) Cr. P.C. Heard learned counsel for the petitioner.

2. It appears that a proceeding u/s 145 Cr. PC. was initiated between the parties in respect of 5 kathas of land of Plot No. 901 Khata No. 50, Mauza Rajapur. The parties appeared and filed their show cause. Witnesses on behalf of the petitioner were also examined. The second party of the proceeding (O.Ps. No. 2 to 11) then filed a petition u/s 145(5) Cr. P.C. for dropping the proceeding on the ground that Title Suit No. 538/93 is subjudice between the parties in respect of the same land. The learned S.D.M, after hearing the parties by the order dated 22.3.2003 dropped the proceeding. The petitioner then went in revision and the learned Addl. Sessions Judge after hearing the parties by the impugned order dismissed the revision.

3. Learned counsel for the petitioner submitted that the above title suit has been

filed only for declaration of title and no relief with regard to possession has been prayed therein in a proceeding u/s 145 Cr.P.C., possession of parties is decided. So, the learned Addl. Sessions Judge was not justified in dismissing the revision. She relied on the decision of the Supreme Court in the case of Ram Sumer Puri Mahant vs. State of U.P. & Ors., reported in 1985 PLJR 14.

4. Learned counsel further submitted that the above title suit has been filed by Budhdeo Sharma and not by the petitioner. Therefore, the parties in the proceeding are not the same as the parties in the suit. Therefore, on the basis of pendency of the title suit there was no justification for dropping the proceeding.

5. As regards the first contention of the learned counsel, the Apex Court in the case of Amresh Tiwari Vs. Lalta Prasad Dubey and Another, following the decision of the Court in the case of Ram Sumer Puri Mahant (supra) relied on by the learned counsel held that "where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be granted by the civil court, the proceeding u/s 145 should not be allowed to continue." This is because civil court is competent to decide the question of title as well as possession and the order of the civil court is binding on the Magistrate.

6. Therefore, where suit between the parties is only for declaration of title in respect of the same property in that case also a parallel proceeding u/s 145 Cr. P.C. cannot be instituted or allowed to proceed.

7. As regards the second submission of the learned counsel, the case of the petitioner himself is that the disputed property has been transferred to Budhdeo Sharma. Therefore, Budhdeo Sharma has stepped in the shoes of the petitioner. The case of the O.Ps. as mentioned in the impugned order also shows that the suit has been filed by the petitioner as attorney of his brother Budhdeo Sharma. Therefore, on this ground it cannot be said that the parties in the suit are different from the parties of the proceedings.

8. It was also submitted by the learned counsel that previously also O.Ps. had filed a petition for dropping the proceeding and the same was not allowed and the learned Sessions Judge by the order dated 27.9.2002 in Cr. Revision No. 408/2002 had directed the S.D.M, to dispose of the case and that the order has become final. Therefore, there could be no second application for dropping the case.

9. The impugned order shows that previous petition was filed on the ground that the proceeding had become seven years old and there was no apprehension of breach of peace. The order of the Sessions Judge dated 27.9.2002 shows that no final order was also passed by the S.D.M. on the previous petition of the second party (O.Ps.). Therefore, the subsequent petition u/s 145(5) Cr. P.C. which was filed on different ground was quite competent and this is no ground to interfere with the impugned order.

10. It may also be mentioned here that though the revisional order of the sessions court can be challenged u/s 482 Cr. P.C. the High Court should not act as second revisional court. The High Court would interfere with the order of the sessions court in such cases, in exercise of its inherent power only when the interest of justice called for quashing of the order. But in this case, as already mentioned, though the suit is only for declaration of title the relief with regard to possession cannot be claimed thereon and as there is dispute between the parties with respect of possession, the relief with regard to possession has to be added and as the same would be decided in the civil court, the continuance of the proceeding would be a mere misuse of the process of Court. Thus, there appears to be no merit in this petition. Accordingly, the same is dismissed at the stage of admission itself.