
(2003) 05 JH CK 0021

In the Jharkhand High Court

Case No : Criminal Revision No. 529 of 2002

Haripoda Mardi and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146

Citation : (2004) CriLJ 345 : (2004) AIR Jhar HCR 179 : (2003) 2 BLJR 1241 : (2003) 3 JCR 482 : (2006) 2 JLJR 569

Hon'ble Judges : Deoki Nandan Prasad, J

Bench : Single Bench

Advocate : P.P.N. Roy, for the Appellant; APP and M. Jagannath, for O.P. Nos. 2 to 9, for the Respondent

Final Decision : Allowed

Judgement

Deoki Nandan Prasad, J.—This Revision is direction against the order dated 23rd August, 2002 passed in Cr. Revision No. 6 (C) of 2001, whereby and whereunder the learned 2nd Additional Sessions Judge, Saraikella allowed the revision application after setting aside the order dated 31-7-2001 passed by the learned Sub-Divisional Magistrate, Saraikela in Misc. Case No. 414 of 2000 passed u/s 146(1) of the Code of Criminal Procedure restraining both parties from going over the lands in question and the Officer-in-charge Chandil was appointed as Receiver.

2. The learned Counsel appearing on behalf of the petitioner submitted that the learned Revisional Court (Additional Sessions Judge) committed error in allowing the revision application after setting aside the order passed by the learned Sub-Division Magistrate, who rightly attached the land in question after being satisfied about the emergency and likelihood of apprehension of breach of peace. It is further argued that the proceeding u/s 145, Cr. P.C. initiated in respect to the land in question as there was apprehension of breach of peace and if such attachment is not made, there is chance of bloodshed and hence after finding

emergency, the Court below attached the land in question but the learned Additional Sessions Judge without appreciating the police report in proper way passed the order impugned, which is fit to be set aside.

The learned Counsel also relied upon the case of Gaya Singh and Others Vs. Doman Singh, It is further submitted that attachment even without hearing the parties is permissible and till the conclusion of the proceeding the attachment ought to be continued to avoid any untoward incident for the said land.

3. On the other hand, the learned Counsel appearing on behalf of the Opposite parties contended before me that there is no illegality in the order impugned as the Court below passed the order without any evidence,

4. From perusal, it is clear that a proceeding u/s 145, Cr. P.C. was already initiated between the parties in respect of the land in question. Later on a petition was filed for attachment of the land on the basis of which the police was asked to enquire into the matter and submit the report and after perusal of the said report of the police, the learned Sub-Divisional Magistrate after being satisfied about the grave situation passed the order for attachment by order dated 31-7-2001. Thereafter, the Opposite parties preferred Revision, which was allowed but the Revisional Court failed to consider the report submitted by the police showing about breach of peace at the spot. Both parties are adamant to disturb the atmosphere and after being satisfied the learned Sub-Divisional Magistrate passed the order impugned attaching the land in question, which indicates that he has applied his mind as well as it is well-settled that the order passed u/s 146(1), Cr. P.C. is also of temporary nature and interlocutory against which no revision can lie and this fact has been over looked by the learned Additional Sessions Judge in deciding the matter. Since, the enquiry has already been made and on the basis of which the police submitted a report dated 2-7-2001 whereby the learned Sub-Divisional Magistrate observed that there is a chance of tussle and also likelihood of the breach of peace, therefore, the learned Revisional Court without going into the merit and appreciating the whole facts and situation passed the order impugned, which is fit to be set aside. It is also settled that if the Magistrate satisfies and finds that there is no apprehension of breach of peace then the said temporary order about attachment can, at any point of time, be withdrawn.

5. In this view of the matter, it is evident that the learned Revisional Court committed gross error in passing the order impugned, which is liable to be set aside. In the result, I find merit in this application, which is allowed. Consequently, the order dated 23rd August, 2002 is, hereby, set aside.

Before parting with the case, it is made clear that the learned Magistrate shall proceed with the proceeding expeditiously and dispose of the same by taking affective steps.