

(2023) 08 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous No. 709 Of 2022

Jalbar Miya @ Jabbar Miya @ Javar Alam

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144, 145

Citation : (2023) 08 PAT CK 0060

Hon'ble Judges : Rajesh Kumar Verma, J

Bench : Single Bench

Advocate : Ajay Kumar Pandey, Vinod Shanker Modi

Final Decision : Dismissed

Judgement

Rajesh Kumar Verma, J

1. Heard learned counsel for the petitioner and learned A.P.P. for the State.
2. The present application has been filed for quashing the order dated 23.01.2021 passed by the learned SDM Marhowrah Saran in Trial No. 01 of 2021 and order dated 06.03.2021 passed by the learned Sessions Judge Saran at Chapra in Cr. Rev. No. 17 of 2021.
3. The brief facts of the present case is that the learned Court below on the basis of the report of the SHO of the Marhowrah P.S., satisfied that there is apprehension of breach of peace between the parties in respect of land in question being Khata No. 170, Survey No. 1001 measuring an area 01-04-15 dhur situated in Mauja Sundar circle Masarakh, District- Saran.
4. The learned SDM on the basis of the report of the SHO initiated the proceeding under Section 144 of the Cr.P.C. and both the parties have been directed to file their respective show cause along with relevant document and further directed not to visit the land in question.
5. As per direction of the learned SDM, both the parties had appeared and filed

their respective show cause. Learned SDM after hearing the parties and gone through the respective show cause has been pleased to convert the Section 144 of the Cr.P.C. proceeding into Section 145 of the Cr.P.C. proceeding vide order dated 23.01.2021.

6. The petitioner has challenged the order dated 23.01.2021 passed by the learned SDM filing Cr. Rev. No. 17 of 2021 before the Sessions Judge, Saran at Chapra and the learned District & Sessions Judge had also pleased to affirm the order of the learned SDM.

7. Learned counsel for the petitioner submits that the learned Court below without considering the show cause of the petitioner has converted the Section 144 of Cr.P.C. proceeding into Section 145 of Cr.P.C. proceeding. It appears from the report that there is hut of the petitioner on the land in question and the hut in question is dwelling house of the petitioner therefore, proceeding converted into Section 144 Cr.P.C. to Section 145 Cr.P.C. is not proper/justified in accordance with law.

8. The learned counsel for the State on the other hand vehemently opposed the prayer of the petitioner and submits that the learned Court below has only converted the proceeding under Section 144 Cr.P.C. into proceeding Section 145 Cr.P.C. and has not passed any final order and also not decided the possession of the land in question in favor of any of the parties in respect to the aforesaid land in question.

9. Having considered the rival submission of both the parties and gone through the record of the case and the learned District and Sessions Judge, Saran at Chapra has rightly affirm the order of the learned SDM.

10. In view of the aforesaid, there is no merit in the present application and the same is dismissed.