
(1998) 11 GAU CK 0010
In the Gauhati High Court
Case No : Criminal Revision No. 395 of 1998

Jatin Das

APPELLANT

Vs

Amritlal Das

RESPONDENT

Date of Decision : 28-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 146, 397, 401

Citation : (1999) 1 GLT 97

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A. Purkayastha, Raj Kr. Agarwalla and M. Talukdar, for the Appellant;
J.M. Choudhury and A.K. Goswami, for the Respondent

Judgement

P.G. Agarwal, J.—This Criminal Revision u/s 397/401 Code of Criminal Procedure is directed against the order dated 18.9.98 passed by the Addl. District & Sessions Judge, Morigaon in case No. MRF/11/92 of 1998 u/s 144, Code of Criminal Procedure

2. The facts in brief are that the Petitioner Shri Jatin Das filed an application before the District Magistrate, Morigaon stating, inter alia, that No. 32 Daipara Min Mahal Fishery and No. 129 Haria Dablong Fishery were settled with 35 No. Pakoria Min Samabay Samity Ltd., hereinafter referred to as "the Samity". The present Petitioner was the Secretary of the said Samity and in the year 1995 he was allowed to run the said fisheries but before the expiry of the said period, the Opposite party No. 1 Shri Amrit Lal Das who has been appointed as the Secretary of the Samity is creating problems and there is apprehension of serious breach of peace relating to the possession of the said fisheries. The Petitioner, Therefore, prayed for drawal of a proceeding u/s 144, Code of Criminal Procedure and for declaration of his possession over the fisheries described in the schedule to the plaint, hereinafter referred to as "the DL".

3. On being satisfied the learned Addl. District Magistrate, Morigaon vide Order dated 18.9.98 drew up a proceeding u/s 144 Code of Criminal Procedure and

prevented the members of the second party from entering into the DL. Thereafter the present Respondent Amrit Lal Das filed an application for modification of the order dated 18.9.98 and the learned Addl. District Magistrate, after hearing the second party, modified the order and even restrained the first party from entering into the DL. Feeling aggrieved the Petitioner first party has filed the present revision.

4. I have heard the learned Counsel for both the sides and perused the record. Sub-clause (5) of Section 144 Code of Criminal Procedure reads as follows:

Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor-in-office.

5. Hence under Sub-clause (5) as stated above, the Magistrate has the power and jurisdiction to rescind, alter or modify any order passed by him. Moreover, the order restraining either party is in the nature of attachment as provided u/s 146, Code of Criminal Procedure and these are reviewable. It is well settled in view of the decision of this Court in the case of Indrapuri Primary Co-operative Housing Society Ltd. reported in 1991(1) GLR 23 that no revision lies against an order of attachment u/s 146, Code of Criminal Procedure Likewise, I hold that the orders passed under" Sub-clause (5) are interlocutory order and no revision lies against them.

6. The learned Counsel for the Respondent further submitted that in the instant case the drawal of proceeding u/s 145 Code of Criminal Procedure was bad in law as it related to possession of fisheries and as per Petitioner's own admission he had prayed for declaration of possession. Further, there was no allegation even regarding apprehension of breach of public peace and tranquillity. The Petitioner merely claimed that there is a dispute between the two parties only. Learned counsel for the Petitioner filed a written argument stating that the preliminary order was not challenged by way of revision before this Court and, as such, this Court cannot look into the that aspect of the matter. It is seen that the impugned order was passed on 18.9.98 and, as such, it has lapsed due to efflux of time on 17.11.98. Hence the point raised by the learned Counsel for the Petitioner has become mere academic and as the proceeding is no more in existence, the matter needs no further consideration.

7. In the result, the revision stands dismissed.