
(2000) 03 PAT CK 0043

In the Patna High Court

Case No : Criminal Miscellaneous No. 5397 of 1998 (R)

Kailash Choudhary @ Kailash Pd. Choudhary

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

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

Citation : (2000) 2 BLJR 1546

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar Sinha, J.—This application u/s 482, Cr.P.C. has been preferred against the order dated 21.7.98 passed by the IIInd Additional

Sessions Judge, Dhanbad, in Criminal Revision No. 79 of 1997 u/s 145, Cr.P.C. whereby and whereunder he set aside the order passed by the

Sub-Divisional Magistrate Dhanbad, in M.P. Case No. 687/93 and remitted the matter to him for providing opportunity to the parties to the

proceeding to prove the documents already filed by them and decide the matter in accordance with law.

2. The relevant facts concerning this application are that on 6.4.93 the opposite party No. 2 filed a petition u/s 145, Cr.P.C. before the Sub-

divisional Magistrate, Dhanbad, with a prayer to initiate the proceeding u/s 145, Cr.P.C. in respect of a piece of land the details of which was

given in the petition. It was alleged that the. petitioner along with some others persons tried to disturb the peaceful possession of the opposite party

No. 2. The learned Sub-Divisional Magistrate, Dhanbad, registered M.P. Case No. 687/93 on the basis of the petition filed by the opposite party

No. 2 u/s 145, Cr.P.C. and is vied notice to both the parties who filed their respective written statements in course of the proceeding. The

petitioner was the second party who examined nine witnesses and certain documents were also marked as Exhibit-1 to 6/b on behalf of the

petitioner. Opposite party No. 2 also examined two witnesses but did not file any documentary evidence. After considering the evidence of all the

witnesses examined by both the parties and hearing the arguments advanced on their behalf, learned Executive Magistrate, Dhanbad, declared

possession over the disputed land in favour of the petitioner/second party by his order dated 18.8.97. The opposite party No. 2 preferred a

revision against the order dated 18.8.97 passed by the learned Executive Magistrate, Dhanbad, vide Cr. Revision No. 79/97, which was ultimately

transferred to the Court of 2nd Additional Sessions Judge, Dhanbad, for disposal.

3. It appears from the impugned judgment passed by the learned 2nd Additional Sussex's Judge, Dhanbad, that he set aside the order of the

Executive Magistrate solely on the ground that the several documents tiled on behalf of the second party had not been marked as Exhibit as per the

provision of the Evidence Act and so, those documents were not admissible, in evidence. Therefore, relying on the decision of this Court in the

case of Kanda Musher and Ors. v. Jagdish Devi and Ors. 1979 B.B.C.J. 82, the learned Additional Sessions Judge set aside the order passed by

the Executive Magistrate and remitted back the matter to the Court concerned directing him to provide opportunity to the parties to prove the

documents in accordance with law.

4. I have examined the record and I also find that the documents viz. Exhibit-1 to 6/b have not been marked as Exhibit in accordance with the

Evidence Act. Therefore, it is undisputed that the Exhibit-1 to 6/b were not properly marked as Exhibits in accordance with the provisions of the

Evidence Act.

5. Learned Counsel appearing for the petitioner argued before that that in the case of Kolha Jena Vs. Pravakar Patra and Another, , it has been

held by the Orissa High Court that the documents filed by the parties can be taken into consideration even without formal proof of document. His

Lordship also held that the nature of inquiry u/s 145, Cr.P.C. being a short and summary one; it is quite possible that the Magistrate in a particular

case may feel that the case can be disposed of on perusal of the documents without examining any witness. It was also held that the documents

filed by the parties are to be taken into consideration and that can be done even without formal proof. Marking of document as exhibit is necessary

for identification and it is not a mandatory condition precedent before reliance can be placed on the same. It was, therefore, submitted that in the

light of the aforesaid decision of the Orissa High Court, the learned Court below has committed error in setting aside the order passed by the

Executive Magistrate only on the ground that the documents filed on behalf of the petitioner were not marked properly in accordance with the

provision of the Evidence Act.

6. In the light of the aforesaid submission, the learned Counsel for the opposite parties has placed reliance upon the decision in the case of *Kandu*

Musharand Ors. v. Jagdish Debi and Ors. 1979 BBCJ 82, wherein it has been held that the procedure of deciding the proceeding on perusal of

the statement put in by the parties and the affidavits and documents filed by them has been given a go-bye. Witnesses have not to be examined and

documents proved in accordance with the Evidence Act. It was, therefore, held that the order passed on a consideration of oral evidence and

documents not proved in accordance with law has to be set aside.

7. Under the new Code procedure has been laid down u/s 145(4), Cr.P.C. which governs the manner in which the proceeding u/s 145, Cr.P.C.

has to be disposed of. Parties are, therefore, bound to follow the procedure laid down u/s 145(4), Cr.P.C. and no waiver will apply so far as the

procedure as laid down under the law is concerned. Provision of Section 145(4) Cr.P.C. maybe quoted hereunder:

145. (i) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute,

peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he

thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order made by him under Sub-section (1), in

possession of the subject of dispute;

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossess within two months next before the date on

which the report of a Police Officer or other information was received by the Magistrate, or after that date and before the date of his order under

Sub-section (1), he may that the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1).

The aforesaid provision would clearly indicate that the Magistrate shall receive the evidence as may be produced by the parties which means that

the documents which the parties intend to adduce in evidence has to be proved in accordance with the provision of the Evidence Act and the

Magistrate who considers the documents which have not been proved in accordance with the law of evidence has certainly committed illegality in

considering those documents. In other words, the Magistrate cannot look into those documents which have not been legally proved in accordance

with the provision of the Evidence Act.

8. In the instant case, it appears from the record as well as from the impugned order passed by the learned Additional Sessions Judge that the

documents, viz., Exhibit. 1 to 6/b which -were considered by the learned Executive Magistrate for coming to his conclusion were not proved in

accordance with the provision of the Evidence Act and the learned Additional Sessions .Judge rightly set aside the order passed by the Executive

Magistrate and remitted back the matter to him for providing opportunity to the parties in the proceeding to prove the documents filed by them in

accordance with law and then decide the matter in coming to conclusion. The learned Additional Sessions Judge has relied upon the decision of

this Court in the case of Kanda Musher and Ors. v. Jagdish Devi, (supra) which in my view, lays down the correct proposition of law.

9. For the reasons stated above, the order dated 21.7.98 passed by the IInd Additional Sessions Judge, Dhanbad in Cr. Revision No. 79 of 1997

is upheld. In the result, therefore, I do not find any merit in this application which stands dismissed.