
(2015) 04 JH CK 0149
In the Jharkhand High Court
Case No : Criminal M.P. No. 1401 of 2005

Kartik Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 145(4)

Citation : (2015) 2 JLJR 641

Hon'ble Judges : Dhrub Narayan Upadhyay, J

Bench : Single Bench

Advocate : Arvind Kr. Choudhary, for the Appellant; Asif Khan, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dhrub Narayan Upadhyay, J—This petition has been filed for quashing the order dated 22.9.2005 passed by learned Additional Sessions Judge, Fast Track Court, Deoghar in Cr. Revision No. 106 of 2003, whereby judgment dated 16.8.2003 passed by learned Executive Magistrate, Madhupur in Cr. Misc. No. 19 of 1996 has been set aside. The petitioner was the first party, whereas O.P. Nos. 2 to 5 were second party before the Executive Magistrate in Cr. Misc. No. 19 of 1996. On the basis of police report, a proceeding under Section 144 Cr.P.C. was initiated on a piece of land, measuring an area of 12 decimals under Dag No. 130, Jamabandi No. 11, Mouza-Dhanpalashi within the district of Deoghar.

2. Both the parties, after service of notice, appeared before the Executive Magistrate and filed their respective show cause. Since both the parties had been claiming their possession over the disputed land, the proceeding was converted under Section 145 Cr.P.C. vide order dated 4.9.1992. After conversion of the proceeding under Section 145 Cr.P.C. the parties had put their appearance and filed their respective written statement and led evidence. After hearing the parties and considering documents and evidence on record, learned Executive Magistrate has passed order dated 16.8.2003 under Section 145(4) Cr.P.C. in

favour of petitioner-first party.

3. The aforesaid order was challenged by the opposite/second party before the learned Additional Sessions Judge vide Criminal Revision No. 106 of 2003. The learned Additional Sessions Judge by order dated 22.9.2005 passed in Cr. Revision No. 106 of 2003, has set aside the order dated 16.8.2003 passed in Cr. Misc. No. 19 of 1996 and hence this Cr.M.P.

4. It is contended that learned Additional Sessions Judge has not decided the revision on merit of the case, rather passed impugned order only on the ground that conversion of proceeding under Section 145 Cr.P.C. by order dated 4.9.1992 was illegal and, therefore, further proceeding and orders are all illegal. It is pointed out that after conversion of proceeding under Section 145 Cr.P.C. the second party has not challenged the order dated 4.9.1992, rather participated in the proceeding. Needless to submit that order dated 4.9.1992 was also revisable and against that order revision should have been preferred, but it was not done. Since learned Additional Sessions Judge has not decided the issue on merit, the impugned order is highly erroneous and liable to be set aside.

5. Learned counsel for the second party has opposed the argument and submitted that revisional court has every jurisdiction to go through the root of the case. If there was an illegality, the court is empowered to look into the matter. Participation of the second party in the proceeding initiated under Section 145 Cr.P.C. shall not be presumed to be an illegality nor could be an act of waiver. In the circumstance, there is no merit in this petition and the same is liable to be dismissed.

6. I have gone through the case records and the documents annexed. It appears from order dated 16.8.2003 passed by learned Executive Magistrate that on the basis of police report dated 23.6.1992, proceeding under Section 144 Cr.P.C. was initiated on 7.7.1992 with respect to disputed land under jamabandi No. 11, Dag No. 130, area measuring 12 decimals. The parties were served with notice, they appeared and filed their respective show cause claiming their right, title and possession over the land in dispute. The matter was heard by learned Magistrate on 4.9.1992. Since both the parties had been claiming their possession over the land in dispute, it was desirable to convert the proceeding under Section 145, Cr.P.C.. to decide the factum of possession.

7. Learned Additional Sessions Judge has not considered all these aspects that proceeding under Section 144 Cr.P.C. was initiated on the basis of police report, which itself was indicating breach of peace between the parties relating to land in dispute. Learned Additional Sessions Judge has also not taken note of that to decide factum of possession, proceeding under Section 145 Cr.P.C. is required. Since the parties had been claiming their possession over the land in dispute, learned Magistrate has converted the proceeding under Section 145 Cr.P.C. on 4.9.1992. After conversion of the proceeding under section 145 Cr.P.C. the parties had put their appearance and filed their written statements. After

considering the document and evidence on record, order dated 16.8.2003 was passed by the learned Executive Magistrate under section 145(4) Cr.P.C.

Learned Additional Sessions Judge without considering the merit of the case, has decided the revision application on the ground that there was no apprehension of breach of peace and, therefore, there was no occasion for the learned Magistrate to convert the proceeding under Section 145 Cr.P.C. vide order dated 4.9.1992. Learned revisional court did not discuss the evidence led and the documents produced by the parties concerned and the case has not been decided on merit. In that view, the impugned order is bad in law, which cannot sustain.

8. Considering all these aspects of the matter, I feel inclined to allow this petition and, accordingly, the order dated 22.9.2005 passed by learned-Additional Sessions Judge in Cr. Revision No. 106 of 2003 stands set aside with observation that any of the aggrieved shall be at liberty to file civil suit for redressal of their claim(s)/grievance(s) with respect to land in dispute.

9. Needless to mention that aggrieved party should make claim for his right, title, interest and possession, if possession is lost, then recovery of possession may be decided in a civil suit without being prejudiced with any observation made by this Court in this petition. Accordingly, this Cr.M.P. stands allowed.