

(2015) 05 PAT CK 0127

In the Patna High Court

Case No : Criminal Miscellaneous No. 36933 of 2012

Kumar Rakesh Ranjan

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Citation : (2015) 3 BBCJ 243 : (2015) 3 BLJud 229

Hon'ble Judges : L. Narasimha Reddy, CJ.

Bench : Single Bench

Advocate : Mr. Ajay Kumar Singh, Advocate, for the Petitioners; Mr. Rana Randhir Singh, APP, for the Opposite Parties

Final Decision : Allowed

Judgement

L. Narasimha Reddy, CJ. (Oral)—The petitioner challenges the order dated 17.08.2012 passed by the Sub-Divisional Magistrate, Banka-respondent herein.

2. The brief facts are that the Circle Officer of Chandan, of Banka District addressed a letter dated 20th June, 2012 to the respondent stating that the name of father of the petitioner is entered in the revenue records in respect of the land in Khata No.176, Khesara No.984/2714 being an extent of 18 decimals situated in Chandan village and the petitioner is in enjoyment of the said land. He stated that the land is abutting the market place in the village and the petitioner is taking steps to sell the land to the intending purchasers and there is resentment in the residents of the village. At the end, he made a request to the respondent to initiate a proceeding under Section 144 of the Code of Criminal Procedure, since there is every likelihood of the breach of the peace in the village.

3. The respondent took note of the same. However, on 17.08.2012, he passed an order directing that it would not be possible to get a detailed enquiry, and to examine the witnesses under Section 144 Cr.P.C., and accordingly, converted the proceedings into those under Section 145 Cr.P.C. Hence, this petition under Section 482 Cr.P.C.

4. Heard Sri Ajay Kumar Singh, learned counsel for the petitioner and Sri Rana Randhir Singh, learned Additional Public Prosecutor for the State.

5. The nature of steps, that are required to be taken in the proceedings under Section 144 Cr.P.C., on the one hand, and in 145 Cr.P.C. on the other hand, are substantially different. While the former is almost a unilateral action, where under the Executive Magistrate can impose restrictions on the movement of the people, the latter is a seriously contested dispute, between the two sets of parties, attempting to assume possession of the land. It is only when both the parties are before the concerned authority that the proceedings under Section 145 Cr. P.C. can be initiated.

6. Even if the facts mentioned by the Circle Officer in his communication dated 20th June, 2012 are taken to be as true, they cannot constitute the basis for initiating the proceedings under Section 145 Cr.P.C. There is no scuffle for possession. The reasons mentioned by the Circle Officer do not constitute the basis for the proceedings under Section 145 Cr. P.C.

7. Therefore, the petition is allowed, and the order dated 17.08.2012 passed by the Sub-divisional Magistrate in Misc. Case No.579 of 2012, is set aside.