
(2008) 06 JH CK 0022
In the Jharkhand High Court

Mahendra Prasad Sao

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 147, 482

Citation : (2008) 3 JCR 407

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner Mahendra Prasad Sao has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the impugned order dated 23.7.2003 passed by the Vth Additional Sessions Judge, Giridih in Cr. Rev. No. 40 of 1992 whereby and whereunder the order passed by the Executive Magistrate, Giridih in Case No. 911 of 1984 corresponding to T.R. No. 336 of 1988 on 27.5.1992 in a proceeding u/s 147 of the Code of Criminal Procedure was set aside.

2. The petitioner had presented a written complaint before the Village sarpanch on 26.4.1987 stating, inter alia, that a Durga Mandap was situated at village Mandardih where the idol of Goddess Durga used to be installed on every Chaitra month of the year for worship with devotion and on that eve, a fair also used to be organized, attended by people of far away villages. It was further narrated that after completion of Durga Puja the idol of Goddess Durga used to be carried in a procession for its immersion in Packiatad pond passing through Pachamba, pitched road and Jamua road. It was alleged that the members of the opposite party used to show their intention to encroach upon the part of the path way of the procession by displaying lethal weapons and they also used to abuse the public. It was requested to protect the path way of procession from being encroached upon and the right of user of public of the said path be maintained. The petitioner had given Khata No. 72 of Plot No. 364 of the land in question

which was a Gairmazarua land. The matter was referred to the police and in turn, the local police reported the matter before the SDM Giridih for initiation of a proceeding u/s 144 of Code of Criminal Procedure. Upon consideration, the learned Executive Magistrate found it to be a fit case for a proceeding u/s 147 of the Code of Criminal Procedure and accordingly, notices were directed to be issued to the members of the second party who are opposite party herein and both the parties were called upon to show cause.

3. Having considered the stands taken on behalf of the parties the learned Executive Magistrate was satisfied that there was imminent apprehension of breach of peace over the land (Path) in question in respect of exercise of the right of user of the path between the parties and after enquiry it was held that the land in question was a public path, accordingly, the members of the second party/opposite party herein, were restrained from disturbing the right of user of path by the petitioner and others.

4. Against the said order passed by the Executive Magistrate the members of the opposite party viz. Bhim Sao, Dasrath Sao and Kashi Sao preferred Cr. Revision No. 40 of 1992 and the learned Vth Additional Sessions Judge. Giridih after appraisal of the evidence available on record as produced on behalf of the opposite party found that the Executive Magistrate manifestly committed error by not appreciating the evidence in right perspective and held that the public had right of user and the members of second party/opposite party were restrained from causing any kind of obstruction over the said land.

5. Mr. Indrajit Sinha, the learned Counsel assailed the order impugned by submitting that though the opposite party Nos. 2 and 3 viz. Bhim Sao and Dashrath Sao were not the party to the proceeding u/s 147 of CrPC but their induction as opposite party in the Criminal Revision could not be opposed and they transposed their statement in favour and in the interest of Bhim Sao. Dasrath Sao and Kasi Sao i.e. O.P. herein and in that manner the learned Revisional Court grossly erred. The O.P. Nos. 2 and 3 had no right to enter into compromise with the members of the opposite party who were not the party. defeating the interest of the petitioner and public at large in respect of right of user of the path way. In that view of the matter, the order passed in Cr. Revision No. 40 of 1992 on 23.7.2003 by the Vth Additional Sessions Judge, Girdih therefore, was unsustainable and fit to be quashed.

6. None appeared on behalf of the private opposite parties though vakalatuama was filed on behalf of the Opposite Party No. 4. Kasi Sao.

7. Section 147 of CrPC deals with dispute concerning right of use of land or water.

(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and

requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation.--The expression "land or water" has the meaning given to it in Sub-section (2) of Section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, received all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of Section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under Sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

8. The proceeding u/s 147 of CrPC is usually initiated when a dispute exists regarding the claim of right of user of any land or water, likely to cause breach of peace. Similarly obstruction to a public thoroughfare in taking out a procession is within the competence and jurisdiction of Section 147 of CrPC. I find that the learned Executive Magistrate conducted the enquiry and examined the witnesses produced on behalf of the opposite parties and came to finding by holding right of user of public over the land in question.

9. Section 147(3) empower the Magistrate to make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right. Proviso clause of the section speaks that no such order shall be made where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt under Sub-section (1) of Section 147 of CrPC. It was the case of the petitioner that the procession of Goddess Durga used to be taken out through the land pertaining to Khata No. 72, Plot No. 364, said to be the Gairmazarua land and the same was being used since long by the public as the right of user and the matter was reported to the, police. The learned Executive Magistrate held that the members of the second party/opposite party were trying to encroach upon the land against the public interest.

10. As regards the order passed by the Vth Additional Sessions Judge, Giridih in Cr. Revision No. 40 of 1992 on 23.7.2003 arising out of the order passed by the learned Executive Magistrate is concerned. I find that the Revisional Court did not question the induction of O.P. Nos. 2 and 3 who were not the party to the proceeding u/s 147 of CrPC, who claimed having compromised the case with the other members opposite parties against the interest of the petitioner herein. I further find that the learned Revisional Court ignored the right of user over the land in question by the petitioner and the public at large, rather he tried to decide the title suit in disguise in the proceeding u/s 147 of CrPC which is unsustainable under the law. Accordingly, the order passed by the Vth Additional Sessions Judge, Giridih in Cr. Revision No. 40 of 1992 on 23.7.2003 is set aside and the order passed by Sr. G.S. Munda, the learned Executive Magistrate. Giridih in Case No. 911 of 1984 corresponding to T.R. No. 366 of 1988 on 27.5.1992 is affirmed.

This Cr. M.P. is allowed in the manner indicated above.