
(2001) 04 PAT CK 0048

In the Patna High Court

Case No : Criminal Miscellaneous No. 4211 of 2000

Mosst. Lakshmini Kuer and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(8), 146(1)

Citation : (2002) 1 PLJR 166

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Srinandan Pd. Singh and Uma Shankar Prasad Singh, for the Appellant; Uma Kant Shukla and Rajesh Ranjan No. 1. for Opp. Parties Nos. 2 to 13 and 15, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—Heard learned Counsel for the parties and with their consent this application is being disposed of at the time of admission itself.

2. The Petitioners have impugned the order of the sub-divisional Magistrate, Rosera, dated 5.11.99 by reason of which he has recalled the order of attachment passed by him on 17.6.97.

3. The facts, which are not in dispute, are as follows:

A proceeding u/s 145 of the Code of Criminal Procedure (hereinafter to be referred as "the Code") was started at the instance of the Petitioners-first party in which notices were issued directing the parties to file their show cause. Show cause have been filed but the matter is pending since date of its initiation i.e. from 1997. During this long period some disputes arose, which necessitated in passing of an order of attachment u/s 146(1) of the Code. Before passing this order on 17.6.97 the learned sub-divisional Magistrate perused the police report as well as his own letter as administrator. After hearing the Petitioners-first party order of attachment was passed appointing the circle officer, Bibhutipur, as

receiver. Being aggrieved the second party opposite parties moved this Court in Cr. Misc. No. 1372 of 1997 contending, inter alia, that the said order of attachment was passed without giving them any opportunity of being heard. This Court disposed of the said application on 23.9.1997 observing, inter alia, that if the order was passed without hearing the Petitioners, then they should have approached the Magistrate first instead of rushing to this Court and the Magistrate should have given an opportunity of hearing to them. Observing this, this Court disposed of the same with an observation that if the Petitioners (opposite parties herein) approached the Magistrate then he will consider the question of attachment after according an opportunity of hearing to them provided the order was passed behind their back. Pursuant to this order of the High Court second party-opposite parties approached the Magistrate and this time both the parties were heard. After hearing them by the impugned order dated 5.11.99 he recalled the order of attachment dated 17.6.97 and directed the Circle Officer to settle the lands in view of the Rules and sub-rules of Budhi Gandak. This order of the Magistrate is under challenge in the instant application.

4. Learned Counsel for the Petitioners contends that when the sub-divisional Magistrate passed the order of attachment on 17.6.97 he was satisfied with the circumstances as well as the police report that there exists an emergency, but while passing the impugned order the Magistrate has not applied his mind and mechanically come to a conclusion that the first party-Petitioners are in illegal possession of the land is question. His contention is that before recalling the order of attachment he ought to have considered his own finding, which is highlighted in his report sent to the Deputy Collector incharge District Confidential Section, Samastipur.

5. Learned Counsel for second party opposite parties though fairly concedes that by the impugned order the Magistrate could not have come to a conclusion that the first party-Petitioners were in illegal possession of the land in question but according to him when the Magistrate being satisfied has recalled the order of attachment, this Court should not interfere in his revisional jurisdiction. He further urged that when this Court directed the Magistrate to consider as to whether there was any necessity to pass an order of attachment, he had heard the parties and was of the opinion that such order of attachment was not necessary in the facts and circumstances.

6. From the order of the High Court dated 23.9.97 it appears that very order of the Magistrate dated 17.6.97 was impugned before this Court. The Petitioners of that case challenged the said order of attachment on the ground that the same was passed without affording any opportunity of hearing to them. This Court directed them to approach the Magistrate and the Magistrate was accordingly directed to dispose of the same provided while passing of the order dated 17.6.97 they were not heard, The opposite parties-second party thereafter approached the Magistrate. From the order of the High Court it appears that the Magistrate was required to apply his mind afresh as to whether an order of

attachment should be passed in the facts and circumstances of the case.

7. It is pertinent to mention here that after the order of the High Court there is a police report indicating apprehension of breach of peace for cutting of some standing trees etc. The Sub-divisional Magistrate himself in his administrative capacity had written to the Deputy Collector Incharge District Confidential Section expressing his apprehension about breach of peace. In his report he has noticed the earlier order of attachment and order of this Court also. He has reported that the opposite party has not yet prayed before him for hearing on the petition afresh and now in the meantime they are trying to remove the standing crops for which there is apprehension of serious breach of peace. This report is dated 6.8.98. Though Mr. Shukla submits that the Sub-divisional Magistrate ought not to have reported of these facts in his administrative capacity but admittedly that report is on record. If this be the factual position, in my view, the impugned order dated 5.11.99 could not have been passed merely stating that the order of attachment dated 17.6.97 need not be continued. This Court directed the Magistrate to reconsider as to whether facts and circumstances required the Magistrate to pass an order of attachment and not to consider as to whether the earlier order of attachment should be allowed to continue or should be recalled. The Magistrate, in my view, has misdirected himself by mis-interpreting the order of this Court. Secondly, I fail to understand as to how in his impugned order the Magistrate has given a finding that the Petitioners are in illegal possession of the disputed land. He has completely forgetting (sic) his jurisdiction in this regard. Possession is required to be declared after the end of the processing (sic-proceeding?) u/s 145 of the Code, which is admittedly pending. If this type of casual finding is given in a proceeding u/s 146(1) of the Code either of the parties may taken advantage of the same in proceeding u/s 145 of the Code. On this score also the order impugned cannot be allowed to stand.

8. Learned Counsel for the parties agree that the while 145 proceeding should be disposed of within three months and till then if circumstances compel the Magistrate may pass order u/s 145(8) of the Code.

9. In the result, this application is allowed by setting aside the order dated 5.11.99. The Magistrate is directed to dispose of the proceeding u/s 145 of the Code within three months from the date of receipt/production of a certified copy of the order before him. The parties are directed to cooperate with the Magistrate in the proceeding within the aforesaid period and if the Magistrate finds that either of the parties is trying to linger the matter without any reasonable cause he may proceed with the proceeding ex parte in accordance with law. The Magistrate is directed to see that till 145 proceeding is not disposed of neither of the parties will cut and/or remove any trees, crops and fruits over the land in question. If the Magistrate finds on enquiry that either of the parties is violating his direction, he will immediately write to the District Magistrate to take suitable action against that party.

10. With the above observations/directions this application is allowed.
11. Let this order be communicated through fax on cost being deposited by the Petitioners.