

(1998) 03 PAT CK 0050

In the Patna High Court

Case No : Criminal Miscellaneous No. 10320 of 1991

Nand Kishore Thakur and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Constitution of India, 1950 — Article 21

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

Citation : (1998) 2 PLJR 229

Hon'ble Judges : N. Pandey, J;I.P. Singh, J

Bench : Division Bench

Advocate : Udit Narayan Singh and Amar Nath Pathak, for the Appellant; A.H. Motiur Rahman, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey and I.P. Singh, JJ.—This is a petition u/s 482 of the Code of Criminal Procedure (in short the "Code") for quashing the order dated 19.7.1991 of the 2nd Additional District and Sessions Judge, Siwan, whereby he had set aside the order of the Sub-divisional Magistrate dated 28.7.1990, declaring the possession of the petitioners u/s 145 of the Code with regard to the lands in dispute. According to the learned Judge the Sub-divisional Magistrate had erred in law, while converting the proceeding u/s 144 of the Code to a proceeding u/s 145 after the expiry of a period of sixty days. In support of such views, he has also placed reliance on a decision of this Court in the case of Mahesh Dhanuk vs. Sakal Mahto, 1973 B. B. C. J. 109. Since according to the Sessions Judge, the conversion of the proceeding itself was bad, he did not consider other facts of the case.

2. It appears when this case was placed for hearing before a learned Single Judge, apart from other points submission was also made that in view of the law laid down by this Court in the case of Ram Chandra Rai & ors. vs. The State of Bihar & ors., 1991(1) P.L.J.R. 36, no proceeding u/s 145 of the Code can

continue beyond a period of seven years from the date of its initiation. The learned Judge having noticed that such a period was not prescribed under the Code, referred the case to a Division Bench.

3. Before proceeding to examine the last question whether in absence of a period prescribed under the Code for disposal of a proceeding u/s 145 of the Code, the decision of this Court in the case of Ram Chandra Rai & ors. (supra) fixing seven years as upper limit can be held to be a good law, we would like to mention that proceeding in this case u/s 144 of the Code was, In fact, started on 22.2.1981 and the order for converting the proceeding u/s 145 was recorded on 22.4.1981. Therefore, it was exactly on the 60th day such an order was recorded. Thus, even the decision of this Court as reported in "1973 B. B. C. J. 109" is taken into consideration, the learned Addl. Judge was not justified in holding that the proceeding was converted after expiry of sixty days. Because, in fact, it was converted to a proceeding u/s 145 of the Code within two months from the date of initiation.

4. Regarding the question whether the period of seven years fixed in the case of Ram Chandra Rai (supra) as upper limit for disposal of a proceeding u/s 145 can be held to be a good law, it would be relevant to mention that undisputedly under the Code of Criminal Procedure no such time limit has been fixed for the continuance or disposal of a proceeding u/s 145 of the Code. In fact, a Bench of this Court In the case of Mina Devi Vs. State of Bihar having examined such aspect of the matter has held that in absence of any time prescribed under the Code, it would not be proper to quash such proceeding simply because a period of seven years had passed from the date of initiation.

5. It is true that a proceeding u/s 145 of the Code Is of summary nature and indeed procedure prescribed therein require speedy disposal of the proceeding. But a question arises that in case where for some reason or the other, proceeding continued pending for more than seven years, it will be enough to terminate such proceeding. Sub-Section (5) of Section 145 of the Code provides that a party to the dispute or any other person Interested may at any stage of the proceeding draw attention of the Magistrate that no such dispute exists or existed; and In such a case the Magistrate shall cancel the proceeding. But no time limit has been provided by the legislature for continuance of a proceeding. No doubt, in the case of Ram Chandra Rai (supra,) it was held by a Division Bench of this Court that if a proceeding u/s 145 of the Code remains pending for more than seven years without any fresh allegation or apprehension of breach of peace, such a proceeding should not be allowed to continue beyond that period. While holding such a view, their Lordships had placed reliance on a decision of the learned Single Judge of this Court in the case of Kamleshwar Rai & anr. vs. Keshav Rai & anr., 1986 B.B.C.J. 678. In that case, the proceeding had remained pending for 17 years. While dismissing the revision application, It was observed that continuance of such proceeding for several decades was unreasonable and betrays both the elements of existence of breach of peace and the requirement

of speedy decision.

6. In our view, in absence of any statutory period, incorporated under the Code, it would not be proper to fix a time limit for disposal of such cases. It has been rightly held by a learned Judge of this Court in the case of "Meena Devi vs. the State of Bihar & anr. (supra)" that simply because a proceeding was pending for seven years, it will not be a ground for quashing. Reference in this regard was also made to the views expressed by the apex Court in the case of "Abul Rahman Antulay vs. R.S. Nayak & anr., AIR 1992 S.C. 170 : 1992(1) PLJR (SC) 41." In that case, though the apex Court held that Article 21 of the Constitution requires the courts to try the cases speedily, but it was held that in absence of time prescribed under the Code, it was not possible for the Courts to draw a time limit.

7. Thus, taking Into consideration all the facts and circumstances of the case and the views expressed by this Court In the case of Meena Devi (supra), we hold that no time limit can be fixed for disposal of the proceeding u/s 145 of the Code. For the reasons stated above, we set aside the impugned order passed by the learned Sessions Judge and allow this application to the extent indicated above.