

(1974) 12 PAT CK 0006

In the Patna High Court

Narain Mahton and Others

APPELLANT

Vs

Maresh Prasad Singh and Others

RESPONDENT

Date of Decision : 12-12-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 397, 484

Citation : (1975) CriLJ 1400

Hon'ble Judges : C.P. Sinha, J

Bench : Single Bench

Judgement

C.P. Sinha, J.—This application in revision by the members of the first party is directed against the Magistrate's order dated 8-8-1974 by means of which he has restored the proceeding u/s 145 of the Code of Criminal Procedure (hereinafter referred to as the Code) which was pending between them and the members of the second party (opposite party here). While making this restoration the Magistrate has observed that he is satisfied that the apprehension of breach of the peace between the parties still continues.

2. As it appears, this proceeding initially commenced u/s 144 of the Code on 7-3-1970, the basis of which was the police report submitted in the matter. After hearing the parties with reference to the show cause filed by them in that proceeding, the Magistrate, by his order dated 25-4-1970. converted the proceeding to be one u/s 145 of the Code. He also attached the land during the continuance of the proceeding.

3. The matter continued pending in the Magistrate court till 7-6-1972 when, on that day, he heard the parties and dropped the proceeding releasing the land from attachment. This was on the basis of a petition filed by the first party informing him that a title suit regarding this property had already been instituted and was pending before the civil court for decision. Accordingly, no useful purpose was likely to be served by pursuing this criminal proceeding. As already observed, this dropping of the proceeding was effected in presence of the both sides, after hearing them.

4. The second party, if they had any grievance against this order of the Magistrate dropping the proceeding, instead of moving any higher court filed a petition on the very next day, i.e., 8-6-1972, before the Magistrate requesting him to restore and revive the proceeding challenging the correctness of his earlier order dropping it. In that petition, the second party averred that he could not do so simply because of the pendency of the suit in the civil court in that behalf so long as the apprehension of breach of the ,peace was not eliminated. This petition of the second party continued pending till 24-1-1974 for hearing. On that day, he heard the parties" lawyers at some length and adjourned it to 5-2-1974 on which date he heard them further and directed for the continuance of the proceeding as also called upon them to appear for the hearing of the case on merit on 23-2-1974 because they had already filed their documents. On this very day, i.e., 5-2-1974, he passed a subsequent order from which it appears that he wanted to hear both sides again on the question of revival of the proceeding. Thus, in effect his previous order of that date directing the continuance of the proceeding was not given effect to and was kept in abeyance pending further hearing of the parties on this question. The matter hanged on in the court at that stage till 10-7-1974 when he heard learned lawyers of both sides on the point of restoration of the proceedings and reserved his orders for 16-7-1974. He could not, however, make the order on three intervening dates and passed it on 8-8-1974 restoring the proceeding. Which order is the subject-matter of challenge in this revision.

5. The submission of learned petitioners" counsel before me that since after the Magistrate"s dropping of the proceeding on 7-6-1972 and releasing the land from attachment, there has been no report by the Police or from any other source regarding any apprehension of breach of the peace between the two sides is not controverted by the other side. It will mean that whatever material the Magistrate had about such an apprehension was the above police report on which he had first initiated a proceeding u/s 144 and then converted it into one u/s 145 of the Code. Subsequently however, after hearing the parties, he dropped the proceeding on 7-6-1972 and released the land from attachment and, as shown above, against this the other side did not choose to go to a higher court if they felt dissatisfied about its legality or propriety.

6. Learned Counsel for the opposite party has not been able to point out to any provision of law which, entitled the Magistrate to restore the same proceeding which he had already dropped after hearing the parties. His contention simply is that since the Magistrate has expressed in the impugned order that the apprehension of breach of the peace still continued he was fully competent to restore the proceeding because it was his satisfaction on this subject which mattered. It is difficult to accept this contention in the absence of any specific provision of law in this behalf. It was, no doubt, open to the Magistrate to initiate fresh proceeding under this section if he had materials before him to be satisfied about its necessity to avoid that apprehension. There is, however, nothing to show like this. As already observed, after dropping the proceeding, as above, the

Magistrate did not have any report from the police or any other authority reporting apprehension of breach of the peace between the two sides arising out of this land dispute. In that background, his observation in the impugned order that the apprehension of breach of the peace between the parties over the subject-matter still continued would not appear to be very relevant for the present purpose. That apprehension was anticipated on the materials furnished by the police in their report submitted at that time and after having taken action on receipt of the proceeding on that report the Magistrate actually dropped it in presence of the, parses. In such circumstances, for all practical purposes that report could be regarded as having exhausted its utility in the matter. So, if the Magistrate wanted to take fresh proceeding apprehending breach of the peace at their hands, he should have necessarily some fresh materials for the same to be satisfied about it. There was, however, nothing like that before him. In such a circumstance, on the obtaining facts the Magistrate's restoration of the proceeding, as made, cannot be sustained.

7. Another argument of the opposite party is that this revision is not maintainable being directed against an interlocutory order in view of provision of Section 397(2) of the new Criminal Procedure Code, 1973. This objection cannot be taken to be well founded. This proceeding having commenced in 1970, which was much before coming into force of this new Code, its disposal was to be effected under the old Code as provided in Section 484 of the new Code. That being the position, there seems no legal objection against the entertainability of this revision on that score.

8. On a consideration of all the above facts, I allow this application and quash the Magistrate's restoration order dated 8-8-1974. It is, however, made clear that if in future the Magistrate comes across the necessary materials and feels satisfied about the necessity of such a proceeding in the matter, he will be at liberty to do so, in accordance with law.