

**(1981) 01 PAT CK 0018**  
**In the Patna High Court**  
**Case No : Criminal Misc No. 3941 of 1979**

Naresh Yadav and Others

APPELLANT

Vs

Awadhesh Sharma and Others

RESPONDENT

**Date of Decision :** 03-01-1981

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145

**Citation :** (1981) 29 BLJR 269 : (1981) PLJR 120

**Hon'ble Judges :** M.P. Verma, J

**Bench :** Single Bench

## Judgement

M.P. Verma, J.—The point raised in this application is whether the Sub-Divisional Magistrate, before whom the proceeding had been laid by the Sarpanch u/s 64(2) of the Bihar Panchayat Raj Act, 1947 (hereinafter referred to as "the Act") may either confirm the order or discharge the notice after hearing the parties to the dispute, or the Sub-Divisional Magistrate may convert the proceeding u/s 145 of the Code of Criminal Procedure (hereinafter referred to as the "Code") and will dispose it of accordingly.

2. The Sarpanch of Supi Gram Panchayat on getting information of imminent breach of the peace over plot Nos. 643. 644 and 645 under Khata No 223/73 measuring 9 acres 30 decimals in village Supi under Makhdumpur police station in the district of Gaya, took action u/s 64 of the Act and by written order stating material facts of the case, directed the litigating parties to abstain from going over the lands in question.

3. In view of the order, which I propose to pass, it is not necessary to give any detail of the facts of the case. The petitioners are claiming possession over the disputed plots for over twenty to twentyfive years by virtue of settlement made by old Mahanth, namely, Gajadhar Giri The settlement was made in favour of petitioner Nos. 1, 17, 19, to 21 and they having come in possession over the lands are making payment pf rents in respect of the lands in question whereas respondents 1 to 4, are claiming the lands by virtue of 12 sale deeds made in

their favour from respondent No. 5 Kalyan Giri a Chela and successor of Mahanth Chandra Shekhar Gir who had the authority to make transaction and execute sale-deeds in respect of the lands in question.

4. The Sarpanch of Gram Kutcheri Supi under Sub-section (1) of Section 64 of the Act submitted the proceeding for confirmation before the Subdivisional Magistrate, Jehanabad. The Subdivisional Magistrate, by impugned order, dated 30-7-1979, instead of disposing of the proceeding under Sub-section (2) of Section 64 of the Act, converted the same into a proceeding u/s 145 of the Code. Question arises whether the Subdivisional Magistrate is competent and has jurisdiction to convert the proceeding of the case submitted before him into a proceeding u/s 145 of the Code.

5. Magistrate acting under the Act has been vested with powers to take measures for prevention of the breach of the peace under Sections 107, 144 and even u/s 145 of the Code, whenever there is an apprehension of breach of the peace. Section 64 of the Act confers almost similar Criminal powers on a Sarpanch of Gram Panchayat, Sub-sections (1) of Section 64 reads as follows;

Whenever a Sarpanch has reasons to believe that a breach of the peace or disturbance of the public tranquillity is imminent and immediate prevention or speedy remedy is desirable he may, by a written order stating the material facts of the case and served in the prescribed manner, direct any person or abstain from a certain act or to take action with respect to a certain property in his possession or his management.

6. According to Sub-section (2) of Section 64 of the Act the Sarpanch shall submit the proceeding of the case to the Subdivisional Magistrate as soon as he passes the order under Sub-section .(1) There is no provision under the Bihar Panchayat Raj Act, 1947 that a proceeding initiated u/s 64 of the Act by a Sarpanch be converted into a proceeding u/s 145 of the Code. Mr. Prabha Shankar Mishra, learned Counsel for the respondents however, submitted that the action taken by the Subdivisional Magistrate , by the impugned order, dated 3-7-1979, for all practical purposes will be deemed to be as drawing up of a fresh proceeding and as such, there is no infirmity in the order. It has further been contended that whenever an Executive Magistrate is satisfied either from a report of a police officer or upon other information that a dispute is likely to cause a breach of the peace concerning any land, he shall make an order stating the grounds of his being so satisfied and shall take action accordingly u/s 145.of the Code. Sri Mishra has argued that the proceeding of the case submitted by the Sarpanch under Sub-section 64 of the Act was considered by the Magistrate as an information with regard to the dispute likely to cause breach of the peace and he, therefore, rightly took action u/s 145 of the Code, though there is no provision either explicitly or impliedly to convert a proceeding initiated under the Act to one u/s 145 of the Code. It has been stated at the bar that this must be deemed to be as a fresh proceeding u/s 145 of the Code.

7. It has been noticed in several cases that proceedings initially started u/s 144 of the Code have been converted by the Magistrate into a proceeding u/s 145 of the Code to decide finally which of the parties was in actual physical possession of the lands in dispute on the date of the proceedings. It is equally correct to say that there is no specific provision in the Code of Criminal Procedure for such conversion, i.e. to convert a proceeding u/s 144 into one u/s 145 of the Code. In such a situation the action of conversion taken by the Magistrate may, therefore, be reasonably deemed to be as drawing up of a fresh proceeding u/s 145 of the Code. But so far as the case before him is concerned, I have my doubts whether the learned Magistrate is competent to convert the proceeding submitted before him under Sub-section (1) of Section 64 of the Act into one u/s 145 of the Code. I have no difficulty in rejecting the argument of Sri. Prabha Shanker Mishra that the action taken by the learned Magistrate be deemed to be a drawing up of a fresh proceeding u/s 145 of the Code, Sub-section (2) of Section 64 of the Act explicitly defines the powers of a Subdivisional Magistrate whenever the proceeding of the case is submitted to him by the Sarpanch of a Grampanchayat under Sub-section (1) of Section 64 of the Act. The learned Subdivisional Magistrate has got a very limited jurisdiction. He may, under Sub-section (2) of Section 64 either confirm the order or discharge the notice after hearing the parties to the dispute, if they so desire, It may be relevant to quote Sub-section (2) of Section 64 of the Act, which reads as follows:

As soon as the Sarpanch has issued an order under Sub-section (1), he shall submit the proceedings of the case to the Sub-divisional Magistrate, who may either confirm the order or discharge the notice after hearing the parties to the dispute, if they so desire.

8. From the aforesaid provisions laid down it is crystal clear that the Sub-divisional Magistrate, before whom a proceeding is submitted, has got only two alternatives He is, either to confirm the order or to discharge the notices, but instead of taking action in the manner as provided in the Act, he adopted a third measure by converting the proceeding u/s 64 of the Act into a proceeding u/s 145 of the Code. There is no such power vested in him under the Act and as such, the impugned order of conversion is without jurisdiction and must be set aside. It would be stretching too far to treat the order of the learned Subdivisional Migistrate as an order for drawing up of a fresh proceeding on information laid before him by the Sarpanch in reporting the breach of the peace in relation to a land in dispute, the law does not warrant such sanction, of course, the Subdivjsional Magistrate is competent to take fresh action u/s 145 of the Code. It has been repeatedly pointed out by this Court that whenever there is an apprehension of breach of the peace with respect to some land in dispute, the Magistrate should decide the claim of the parties in a proceeding u/s 145 of the Code. In the present case the Magistrate, in the impugned order wrote out in detail giving facts of the case and respective claims of the parties while sitting over the proceeding submitted to him by the Sarpanch and instead of acting finally in accordance with the provisions laid down under Sub-section (2) of

Section 64 of the Act, passed order converting the proceeding into one u/s 145 of the Code. This order, as I have already said has not got the sanction of law and must be deemed to be without jurisdiction.

9. In the result, the application succeeds. The order dated 30-7-1979 passed by the Subdivisional Magistrate is set aside. If however, any apprehension of breach of the peace exists between the parties, the Magistrate may initiate a fresh proceeding either u/s 144 or u/s 145 of the Code and will dispose of the same in accordance with law.