

(1978) 08 PAT CK 0005
In the Patna High Court
Case No : Criminal Rev. No. 1350 of 1977

Pany Marandi @ Pana and Others

APPELLANT

Vs

Thakur Kisku and Others

RESPONDENT

Date of Decision : 18-08-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 307, 386, 389, 390

Citation : (1978) 26 BLJR 757

Hon'ble Judges : Muneshwari Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muneshwari Sahay, J.—This application is directed against an order passed by the learned Second Additional Sessions Judge, Dumka in Criminal Revision No. 102 of 1975. The Criminal revision arose out of a proceeding u/s 145 of the Code of Criminal Procedure and it was directed against the final order passed in that proceeding. The learned Magistrate had declared possession of the second party over the lands in dispute and the criminal revision application had been filed by the members of the first party.

2. It is not necessary, for the reasons which will be apparent presently, to state the respective claims of the parties over the lands in dispute. The learned Judge after hearing the parties allowed the revision application set aside the order of the learned Magistrate and declared possession of the first party over the disputed lands. The present application has been filed by the members of the second party and the only point which Learned Counsel has urged in support of the application is that it was not competent for the learned Additional Sessions Judge in exercise of revisional powers to have declared possession of the first party over the disputed lands. All that the learned Additional Sessions Judge could have done was to have set aside the order of the learned Magistrate and to have sent back the case to him for afresh decision in accordance with law.

3. Learned Counsel for the opposite party, on the other hand, contends that it was within the competence of the learned Additional Sessions Judge to have declared possession of the first party over the disputed land in exercise of his revisional jurisdiction and, therefore, no interference was called for in this order.

4. Learned Counsel for the parties have not been able to lay their hands on any decision of this Court or of any other High Court which may have direct bearing on the question which, has arisen, for consideration in this case. I have given ray careful consideration to the submissions which have been made before me and I have come to the conclusion that the learned Additional Sessions Judge had jurisdiction to pass the order which he has passed in the Criminal Revision. My reasons for the aforesaid conclusions are these Section 401(1) of the Code of Criminal Procedure, 1973, hereinafter to be called the Code, provides inter alia, that in the case of any proceeding the record of which has been called by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307. Sub-section (1) of Section 399 of the Code provides that in the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Sub-section (1) of Section 401. Section 400 of the Code lays down that an Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under Chapter XXX in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge. Thus, it is clear that the Additional Sessions Judge could exercise any of the powers conferred on a court of appeal by Sections 386, 389, 390 and 391 of the Code. Section 386 of the Code is relevant for the purpose of the present discussion; Clause (a) of Section 386 deals with an appeal from an order of acquittal; Clause (b) deals with an appeal from conviction; Clause (c) relates to an appeal for enhancement of sentence and Clause (d) relates to an appeal from any other order. We are concerned with this very clause which provides that in an appeal from any other order, the appellate court can alter or reverse such order. This power of alteration or reversion of the order can, therefore, be exercised by the learned Additional Sessions Judge sitting as a revisional court in respect of the cases which ate transferred to him by any general or special order of the Sessions Judge. It is not disputed that the Criminal Revision in question had been transferred to the learned 2nd Additional Sessions Judge by the learned Sessions Judge, Dumka. Therefore, the only point which arises for consideration is as to whether the order passed by the learned Additional Sessions Judge in revision case amounts to the alteration or reversal of the Magistrate"s order. I have no doubt that it does. The learned Magistrate had declared possession of the second party over the disputed lands and the learned Additional Sessions Judge reversed that order and declared possession of the first party over the same. In my view, Clause (d) of Section 386 of the Code clearly empowers him to do so. It is true that a revisional court very rarely itself enters into the question of possession in a

proceeding u/s 145 of the Code, but that would not go to show that it has no such powers. Thus, in my view, the learned Additional Sessions Judge was quite competent to declare possession of the first party over the disputed land.

5. Even assuming that he had no such powers, I would have been very reluctant to interfere with his order in exercise of provisional jurisdiction, when I find that the learned Additional Sessions Judge has given a very reasoned order for the conclusion at which he has arrived. He has discussed all the materials, which were on the record, and he has given his reasons why in his opinion the first party was in possession over the disputed lands. As it is, I have held above that the order passed by the learned Additional Sessions Judge was entirely within his competence. There is thus no merit in this application. It is hereby dismissed.