
(2010) 08 PAT CK 0009
In the Patna High Court

Raj Nandan Singh

APPELLANT

Vs

The State of Bihar and Kameshwar Prasad Singh

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

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

Citation : (2010) 08 PAT CK 0009

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 3.5.2000 passed by the Additional Sessions Judge, IIIrd, Sitamarhi in Cr. Revision No. 11 of 1997/15 of 1998. By the said order, the learned Additional Sessions Judge had confirmed the order dated 12.12.1996 passed by the Sub Divisional Magistrate, Sadar, Sitamarhi in Case No. 2071 of 1996 u/s 145 of the Code of Criminal Procedure.

2. Short fact of the case is that the opposite party No. 2 on 9.12.1996 filed a petition before the court of Sub Divisional Magistrate, Sadar, Sitamarhi with a prayer to initiate a proceeding u/s 145 of the Code of Criminal Procedure against the petitioner and two others over the land appertaining to R.S. Khata No. 205, R.S. Plot No. 1774, measuring an area of 8 decimals and R.S. Khata No. 63, R.S. Plot No. 1614, measuring an area of 77 decimals. It was disclosed in the petition filed by the opposite party No. 2 that in respect of the same land, a proceeding u/s 144 of the Code of Criminal Procedure was initiated since member of second party including the petitioner were trying to commit breach of peace over the land in question. It was further stated that earlier Section 144 Cr.P.C. proceeding was initiated in which notices were issued and same was subsequently ended. Thereafter, again the second party including the petitioner were adamant to create dispute over the land in question. It was asserted that on 6.12.1996,

second party armed with fire arms, had came near the land in question, however, since the villagers opposed them the second party returned with slogans that in case of insistence by opposite party No. 2 (first party), the first party will be murdered. Accordingly, it was alleged that there were apprehension of breach of peace.

3. On the basis of the aforesaid petition filed by the opposite party No. 2 in which the petitioner was arrayed as second party No. 1, a proceeding by its order dated 12.12.1996 passed in Case No. 2071 of 1996 was initiated by the learned Sub Divisional Magistrate u/s 145 of the Code of Criminal Procedure. The learned Magistrate directed both the parties to appear before him and file their written statement in respect of their claim.

4. Aggrieved with the order dated 12.12.1996, the petitioner filed a revision vide Cr. Revision No. 11 of 1997/15 of 1998. However, the criminal revision too stood rejected by order dated 3.5.2000 passed by 3rd Additional Sessions Judge, Sitamarhi.

5. The petitioner, after rejection of criminal revision, whereby the learned Additional Sessions Judge had affirmed the order of initiation of proceeding u/s 145 of the Code of Criminal Procedure by the Sub Divisional Magistrate, by its order dated 12.12.1996 passed in Case No. 2071 of 1996, approached this Court by filing the present petition. On 8.12.2000, while issuing notice to opposite party No. 2, this Court directed that in the meantime, further proceeding in Case No. 2071 of 1996 shall remain stayed and thereafter, on 12.2.2002, the case was admitted for hearing and it was directed that during the pendency of this application, interim order dated 8.12.2000, shall remain operative and same is still continuing.

6. Shri Ripudaman Prasad Sinha, learned Counsel appearing on behalf of the petitioner, while challenging both the orders i.e. revisional order as well as order passed by Sub Divisional Magistrate, had argued that the proceeding u/s 145 of the Code of Criminal Procedure was initiated on the basis of false and incorrect statement made in the petition filed by opposite party No. 2 before the Sub Divisional Magistrate. It was submitted that earlier on the petition filed by the opposite party No. 2, a proceeding u/s 144 of the Code of Criminal Procedure was initiated. In the said case, show cause notice was issued and petitioner also filed his written statement. In the said proceeding, a report was also called for and thereafter, the learned Sub Divisional Magistrate heard both the parties and examined entire materials, which were placed before him in respect of claim of the parties over the land, which has been referred as disputed land by the opposite party No. 2. It was submitted by Shri Ripudaman Prasad Sinha that even before the Sub Divisional Magistrate, in a proceeding u/s 144 of the Code of Criminal Procedure, this fact was brought to the notice of learned Magistrate that the petitioner was in exclusive possession and was having title over the land appertaining to R.S. Plot No. 1614, measuring 0.77 decimals, which was lying in the name of petitioner and he was having peaceful possession over the said land.

It was also disputed by the opposite party No. 2 before the learned Magistrate. So far the land appertaining to Plot No. 1774, measuring 7 decimals is concerned, earlier the land was in the name of ancestor of opposite party No. 2, however, in a consolidation proceeding on a compromise, the said plot was exchanged in between petitioner and opposite party No. 2 and since then the petitioner started to enjoy peaceful possession over the said land. The opposite party also took possession over the land, which was exchanged by the petitioner in the consolidation proceeding. Shri Ripudaman Prasad Sinha has further argued that after the decision in the consolidation proceeding regarding exchange of land, the opposite party never raised any objection, but to the reasons best known to him, again and again dispute over the land in question is being raised by the opposite party No. 2 though the petitioner is enjoying peaceful possession over the land. Earlier for the same dispute, a proceeding u/s 144 of the Code of Criminal Procedure was initiated and the learned Sub Divisional Magistrate, after examining entire materials, by its order dated 26.11.1996, decided the proceeding in favour of the petitioner and restrained the opposite party No. 2 from the land in question. Learned Counsel has referred to Annexure-1 to the petition, which is an order dated 26.11.1996 passed in a proceeding u/s 144 of the Code of Criminal Procedure by the learned Sub Divisional Magistrate. Immediately after Section 144 of Cr.P.C. proceeding was ended against the opposite party No. 2 vide order dated 26.11.1996, the opposite party No. 2 arbitrary and maliciously only within 13 days filed a petition before the Sub Divisional Magistrate, Sadar, Sitamarhi for initiating a proceeding u/s 145 Cr.P.C. The opposite party No. 2 falsely and maliciously suppressed the fact that earlier proceeding u/s 144 Cr.P.C. was ended against him only 12 days back to the filing of the present petition. It was further submitted that the learned Sub Divisional Magistrate also failed to firstly enquire regarding the decision of the earlier proceeding u/s 144 Cr.P.C., which ended against the opposite party No. 2 and in favour of the petitioner. The learned Magistrate, in a mechanical manner, had passed the impugned order, which is not sustainable in the eye of law. It was further submitted that the learned Additional Sessions Judge-II, in a mechanical manner, has rejected the revision petition preferred by the petitioner. Shri Ripudaman Prasad Sinha, learned Counsel appearing on behalf of the petitioner, has heavily relied on a single Bench judgment of this Court reported in 1997(1) BLJ 814 Uttam Lal Yadav and Anr. v. State of Bihar and Ors. It was submitted that in Uttam Lal Yadav's case (Supra) also within 12 days of the dropping of the proceeding u/s 144 Cr.P.C., the learned Magistrate had initiated the proceeding u/s 145 of the Cr.P.C. in respect of the same land and between the same party. Learned Counsel for the petitioner has specifically referred to paragraph-9 of the judgment in Uttam Lal Yadav's case(Supra), which is as follows:

9. Coming back to the instant case it appears from the perusal of the earlier order passed by the Sub-divisional Magistrate (Annexure 3) that in the earlier proceeding both the petitioners and respondent No. 2 filed their respective show causes and all the relevant documents were filed. Learned Magistrate after

considering all the facts and the evidence came to a finding that all the documents filed by respondent No. 2 do not relate to the disputed land rather petitioners' title and possession was proved on the basis of the documents filed by them. Learned Magistrate after having satisfied with the case of the petitioners with regard to title and possession passed final order and restrained respondent No. 2 from interfering with the petitioners' possession. Learned Magistrate further observed that the respondent No. 2 may ventilate his claim before the competent civil court. In view of the said order there was no occasion for the Sub-divisional Magistrate to initiate a fresh proceeding just after 12 days in irrespective of the same land and between the same parties. From the impugned order dated 6.6.1996 passed by the Sub-divisional Magistrate, it appears that the said order was passed without the application of mind and without considering the earlier order passed by him. The Additional District Judge, Madhipura has failed to consider the case of the petitioners in its right perspective. Learned revisional court dismissed the revision application without deciding question raised by the petitioners and, therefore, the said order cannot be sustained in law.

7. On the aforesaid ground, learned Counsel for the petitioner has prayed for quashing of both the orders i.e. order dated 3.5.2000 passed by Additional Sessions Judge- IIIrd in Cr. Revision No. 11 of 1997/15 of 1998 as well as order dated 12.12.1996 passed by Sub Divisional Magistrate, Sadar, Sitamarhi in Case No. 2071 of 1996.

8. Shri Ashok Kumar Jha, learned Counsel appearing on behalf of opposite party No. 2 has vehemently opposed the prayer of the petitioner. It was submitted by Shri Jha that once the petitioner had challenged the order of learned Sub Divisional Magistrate, by way of filing a revision petition, which was rejected, the petitioner was not entitled to invoke the inherent jurisdiction of this Court. It was submitted that this amounts to filing a second revision, which is barred under the provisions of the Code of Criminal Procedure. It was further submitted that the opposite party No. 2 was continuing with peaceful possession and title over the land in question and since the petitioner had tried to breach the peace over the land, the opposite party No. 2 had rightly approached the Sub Divisional Magistrate and the learned Magistrate, while initiating proceeding u/s 145 of the Code of Criminal Procedure, has committed no error. It was further submitted that the said order of the learned Magistrate has been affirmed by the revisional court by a reasoned order and there is no ground available to the petitioner to challenge either of the order before this Court. Accordingly, he has prayed for rejection of the present petition.

9. Smt. Indu Bala Pandey, learned Additional Public Prosecutor, appearing on behalf of the State, has adopted the argument, which was advanced by Shri Ashok Kumar Jha, learned Counsel appearing on behalf of opposite party No. 2.

10. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. Prima facie, the court is of the view that once a

proceeding u/s 144 Cr.P.C. had ended against opposite party No. 2 and in favour of the petitioner, then at subsequent stage that too, within 13 days from the order while filing petition for initiation of a proceeding against the petitioner in respect of same land, it was bounded duty on the part of opposite party No. 2 to give the detail of the earlier proceeding particularly the fact that earlier proceeding had recently ended against the opposite party No. 2. In view of earlier order, the learned Magistrate before initiating proceeding u/s 145 of the Cr.P.C., in the facts and circumstances of the present case, was required to obtain a report from the police and only thereafter, he was entitled to initiate proceeding u/s 145 of the Cr.P.C. The fact aforesaid indicates that one way or the other, the opposite party No. 2 was adamant to disturb the peaceful possession of the petitioner and as such even though he failed to satisfy the learned Magistrate in earlier proceeding, which was initiated on his behalf itself that he was not having exclusive and peaceful possession over the land in question, he suppressed the fact while filing the petition before the Magistrate.

11. I have also examined the judgment of this Court in Uttam Lal Yadav's case (Supra). The court is satisfied that the present case is squarely covered by the judgment of Uttam Lal yadav's case (Supra) and as such this Court cannot take a different view. Moreover, the order dated 12.12.1996 as well as order dated 3rd May, 2000 passed by revisional court was stayed by this Court long back in the year 2000 itself and thereafter, even at the time of argument of the present case, the learned advocate appearing on behalf of opposite party No. 2 had not brought any material on record as to whether alleged occurrence over the land in question had re-occurred or not. Meaning thereby that since quite a long time, there was no apprehension of breach of peace and as such no un towards happening had taken place over the land in question.

12. In view of peculiar facts and circumstances of the present case, this Court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the petitioner and, accordingly, both the orders i.e. order dated 3rd May, 2000 passed in Cr. Revision No. 11 of 1997/15 of 1998 by 3rd Additional Sessions Judge, Sitamarhi and order dated 12.12.1996 passed by Sub Divisional Magistrate, Sitamarhi in Case No. 2071 of 1996 are hereby set aside and petition stands allowed.