

(2009) 04 PAT CK 0090
In the Patna High Court
Case No : Cr. Misc. No. 56313 of 2006

Ramashray Singh, Bir Bahadur Singh and Jaiprakash Singh	APPELLANT
Vs	
The State of Bihar, Krishna Singh, Ashok Singh and Shambhu Singh	RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 04 PAT CK 0090

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Heard learned Counsel for the petitioners, learned Senior counsel representing the opposite parties as well as learned APP for the State.

2. This application u/s 482 of the Code of Criminal Procedure has been filed seeking quashing of the order dated 7.7.2006 which has been passed by learned Sessions Judge, Patna in Criminal Revision No. 402 of 2006 rejecting the revision application which in turn has challenged the order dated 8.2.2006 passed by learned Sub-Divisional Magistrate, Masaurhi in case No. 187 of 2005 by virtue of which certain land belonging to the petitioners was ordered to be attached u/s 146(1) of the Code of Criminal Procedure.

3. Some background to the present dispute is that opposite party Nos. 2 to 4 filed an application before the Sub-Divisional Magistrate, Masaurhi on 10.2.2005 for initiation of a proceeding u/s 144 of the Code of Criminal Procedure because they apprehended breach of peace in respect of the land which was Khata No. 15, Plot No. 272 having an area of 90 decimals located at Mauza Sabalpur. They claimed right over the said land and possession for a long time. It was alleged in the petition that on 9.2.2005 when they went to harvest the Masoor crops which they had sown the petitioners forbade them from harvesting the crops for which a proceeding u/s 144 of the Code of Criminal Procedure was initiated.

4. On a notice being issued upon the petitioners they appeared and filed the

detailed show cause denying the allegation and they had also brought materials on record with regard to possession and ownership of the land.

5. Learned Sub-Divisional Magistrate, Masaurhi after taking into consideration the rival contentions came to a considered opinion that the matter was one of right, title and possession which can only be decided by a court of competent jurisdiction of the civil court and the proceeding u/s 144 of the Cr. P.C. came to be dropped on 5.4.2005.

6. Opposite parties were not satisfied with the said decision. They filed yet another application before the Sub-Divisional Magistrate on 30.5.2005 for initiation of a proceeding u/s 145 of the Cr. P.C. Somehow the application u/s 145 of the Cr. P.C. came to be accepted and again notices were issued upon the petitioners. While the matter was pending u/s 145 of the Cr. P.C. and even before any order could be passed, a petition u/s 146(1) of the Cr. P.C. for attachment of the property in question was filed by the opposite parties. This petition was acted upon and order in question came to be passed which is dated 8.2.2006.

7. In a cryptic order learned Sub-Divisional Magistrate ordered attachment of the property in question and when the petitioners moved the learned Sessions Judge in revision the same was rejected on the ground that it was an interlocutory order. It was in this background the present application for quashing the order dated 8.2.2006 u/s 482 of the Cr. P.C. has been filed by the petitioners.

8. Submission of learned Counsel for the petitioners is that on a plain reading of the impugned order passed by learned Sub-Divisional Magistrate would show that there is neither any application of mind nor is there any reason or material assigned in the said order from which can emerge that any emergent situation existed with regard to the property in question to give rise to attachment of the property forthwith. The submission is that the question of apprehension of breach of peace was yet to be decided by learned Sub-Divisional Magistrate because the proceeding u/s 145 of the Cr. P.C. had not reached any finality and the same was pending while the application u/s 146(1) of the Cr. P.C. came to be filed, entertained and order passed. This decision itself shows that the Magistrate was more willing to pass order without considering the totality of the situation specially keeping in the background the fact that earlier proceeding u/s 145 of the Cr. P.C. came to be dropped with observation that the dispute falls within the realm of the civil dispute and the civil court of the competent jurisdiction was only competent to decide the matter.

9. Learned Counsel further submits that the order of learned Magistrate in question cannot be sustained in view of the ratio decided in the case of Jagdish Kunwar Vs. The State of Bihar and Another, where absence of material or reasons of emergency may be a good ground for interference by the Court. While deciding the above case it has been stated that there is distinguishing feature from a mere apprehension of breach of peace and a case of emergency and the Magistrate's order does not make any distinction in this regard.

10. Learned Counsel for the petitioners to meet the objection raised by opposite parties with regard to maintainability of the present petition u/s 482 of the Cr. P.C. relies on a decision of the Hon''ble Supreme Court which is a case of Dhariwal Tobacco Products v. The State of Maharashtra and Anr. reported in 2009 (1) PLJR 310 (SC) where the Hon''ble Supreme Court in this case has come to hold as follows:

Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Sessions is barred u/s 397(2) of the Code, the inherent power of the Court has been held to be available.

The power of the High Court can be exercised not only in terms of Section 482 of the Code but also in terms of Section 483 thereof. The said provision reads thus:

483, Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.--Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

11. The ratio of the decision laid down by the Hon''ble Supreme Court meets the challenge raised with regard to maintainability on behalf opposite parties and to this extent this Court is in agreement that merely because learned Sessions judge dismissed the revision application on the ground that since an interlocutory order was being challenged before him it was not maintainable. In view of the ratio of the case above, the same will not come in the way of exercise of power u/s 482 of the Cr. P.C.

12. Learned Senior counsel representing the opposite parties contends that it may not be necessary to record and furnish material in detail with regard to existence of an emergent situation for exercise of power u/s 146(1) of the Cr. P.C. Mere circumstances that an emergent situation exists is good enough for the Magistrate to exercise such power because he is the best judge in the given situation to invoke such power conferred upon him under the Code of Criminal Procedure. He relies on a decision rendered in the case of Baijnath Choubey and Ors. v. Dr. Ram Ekbal Choubey and Ors. reported in 1981 BLJR 530. Emphasis is on paragraph-11 of the said decision.

13. A bare perusal of the said decision would show that the learned Single Judge has not laid down law in absolute term. The reasoning given in the said decision or the conclusion reached by him was based on the background of facts of the given case. In fact, learned Judge does hold that giving reason is a requirement and may be in the given facts even if the said reasonings was absent the Court can go behind the material facts and reach the conclusion with regard to the correctness of the said order passed by learned Sub-Divisional Magistrate. In otherwords non-furnishing of reason or the material by the learned Magistrate with regard to the emergent situation will have to be looked into by this Court deeply.

14. Another decision which has been relied on by learned Senior counsel of opposite parties with regard to maintainability of the present application u/s 482 of the Cr. P.C. is the case of Rajinder Prasad Vs. Bashir and Others, . Opposite parties rely on paragraph-11 of the said decision.

15. Reading of the said decision coupled with the reading of the latest decision of the Hon"ble Supreme Court, this Court does not have to go into the details of the two except by holding that the power conferred under the statute upon the High Court u/s 482 of the Cr. P.C. is to be exercised to do justice to the litigant in question and interest of justice has to be paramount.

16. The application is allowed. The impugned order passed by the learned Sessions Judge dated 7.7.2006 in Criminal Revision No. 402 of 2006 as well as the order of learned Sub-Divisional Magistrate, Masaurhi dated 8.2.2006 passed in Case No. 187 of 2005 stand quashed.