

(1957) 08 PAT CK 0012

In the Patna High Court

Case No : Criminal Revision No. 414 of 1957

Rana Ramnarain Singh and Others

APPELLANT

Vs

Mahatha Niranjana Lal and Others

RESPONDENT

Date of Decision : 06-08-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 146(1B)

Citation : AIR 1958 Patna 85 : (1958) CriLJ 202

Hon'ble Judges : Imam, J

Bench : Single Bench

Advocate : Lalnarayan Sinha, K.B.N. Singh and Janardan Sinha, for the Appellant; Baldeo Sahay and Uday Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Imam, J.—This is an application in revision against the order of the learned trial Court in a proceeding u/s 145, Criminal Procedure Code. The learned Magistrate has ordered that the first party is in possession of the disputed land and has forbidden the second party from interfering with this possession until the first party is evicted through the process of Court of competent jurisdiction. There was a further direction that the second party should pay Rs. 20/- to the first party as cost. The sale proceeds should be returned to the party found in possession. Before the grounds in the petition it is stated as follows :

"Being aggrieved by and dissatisfied with the judgment and order of Mr. S. P. Singh IV Additional Judicial Commissioner of Ranchi in Cr. M. No. 100 P of 1956 dated 23-2-57 refusing to refer to the Hon'ble High Court for setting aside the order of Mr. K. K. Ambastha, S. D. O., Garhwa in Misc. 158 of 1955 dated 28-11-56 based on the judgment of the Sub-Judge dated 20-9-56 the petitioners aforesaid beg to move your Lordships in revision on amongst others the following grounds."

I will now refer to the prayer portion which runs as follows :

"It is, therefore, prayed that your Lordships will be pleased to admit this application call for the records and after hearing the parties be pleased to set aside the order of the Courts below and declare the members of the Second party in possession and pass such other order or orders as your Lordships may deem fit and proper and pending the hearing of this application stay the operation of the order,"

2. It is thus clear that this application is against the order of the learned Magistrate who passed the order in the proceeding u/s 145, Criminal Procedure Code, and also against the order of the Learned Additional Judicial Commissioner refusing to make a reference to this Court. I have said this because it is pertinent to the point that has been raised.

The point that has been raised in this case is that it is open to the High Court to interfere with the order of the learned trial Magistrate if the findings arrived at by the Civil Court is one that cannot be supported by evidence or materials on record. It is necessary at this stage to refer to Section 146 of the Criminal Procedure Code as amended recently. Sub-section (1-D) of Section 146 runs as follows :

""No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed."

3. Mr. Lal Narayan Sinha appearing in support of this application submitted that while Sub-section (1D) of Section 146 does prohibit an appeal, revision and review of the findings of the Civil Court, but the section in fact refers to such cases where the findings of the civil Court is directly challenged and not incidentally, that is to say, when the prayer of the petitioner is to set aside the order of the criminal Court, namely, the Magistrate then it is open to the Superior Court to consider whether the findings of the civil Court is right or not. I do not think it is at all necessary to deal with this aspect of the matter in view of the provisions of Section 146, Sub-clause (1B), which runs as follows :

"The civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding u/s 145 in conformity with the decision of the civil Court."

4. This Court can only set aside the order of the learned Magistrate if that order of the learned Magistrate is illegal. It is quite obvious that Sub-clause (1B) of Section 146 leaves no alternative to the Magistrate but to carry out the decision of the Civil Court. That being so, it cannot be said that the order of the learned Magistrate was illegal even if it be supposed that the finding arrived at by the civil Court is erroneous. It is not the function of the learned Magistrate to question the finding of the civil Court. He has to carry out the decision of the civil

Court, I will now refer to the important poltion of Sub-clause (1B) of Section 146:

".....and the Magistrate shall on receipt thereof proceed to dispose of the proceeding u/s 145 in conformity with the decision Of the civil Court."

Once the learned Magistrate has done so, the order of the learned Magistrate cannot be said to be illegal and if the order of the learned Magistrate is not illegal, it is not open to this Court to set that order aside in revision. In my opinion, therefore, it is not possible to set aside the order of the learned Magistrate as it is in conformity with the civil Court's decision. The application is, therefore, dismissed.