

(2006) 06 PAT CK 0048

In the Patna High Court

Case No : Criminal Miscellaneous No. 34394 of 2002

Ras Bihari Rai and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 482

Citation : (2006) 3 PLJR 334

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rekha Kumari, J.—Heard. This is an application u/s 482 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Code) for quashing the order dated 7.11.2002 and 8.11.2002 passed in Case No. 1246(M) of 2002 by which the learned Sub-Divisional Magistrate, Bikramganj, Rohtas has initiated a proceeding u/s 145 of the Code on the petition of Dinesh Kumar Rai (Opposite Party No. 2) of the case as against the petitioners and others and vide order dated 8.11.2002 he has attached the disputed land under the provisions of Section 146 of the Code and has passed the order appointing a Receiver for the said land.

2. From the record it appears that Opposite Party No. 2 was noticed but he did not choose to appear. Learned A.P.P. was heard.

3. Learned counsel for the petitioners submitted that the petitioners and the Opposite Party belong to the same family and there are series of title suit in respect of the disputed land. Annexure-4 would show that a title suit has been filed by the present petitioners as against Opposite Party No. 2 and others relating to possession of disputed property. Relying on a decision in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, learned counsel for the petitioners submitted that during pendency of a civil litigation criminal

proceedings are not maintainable and the criminal proceedings are to be dropped. He also submitted that the application for appointment of Receiver with respect to the disputed land is also sub-judice. Therefore, initiating a proceeding u/s 145 of the Code is not maintainable in the eye of law.

4. In the case relied upon by the learned counsel for the petitioners in *Ram Sumer Puri Mahant (supra)*, it has been held that when possession is being examined by the Civil Court and the parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of Receiver for adequate protection of the property during the pendency of the dispute, the multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. The Hon'ble Supreme Court accordingly quashed the order of the learned Magistrate by which a proceeding u/s 145 of the Code was initiated and the property in dispute had been attached.

5. Learned A.P.P. defended the orders and submitted that the learned Sub-Divisional Magistrate has passed the impugned order in order to maintain peace and tranquility.

6. From perusal of Annexures 4 and 5 I find that there is civil litigation pending between the petitioners and Opposite Party No. 2 alongwith others. Hence, in view of the above decision of the Apex Court, I also find that the impugned order initiating a proceeding u/s 145 of the Code is not maintainable in the eye of law and a proceeding u/s 145 of the Code being not maintainable, there is no question of attachment of any property u/s 146 of the Code. Therefore, both the orders are not fit to be maintained rather they are fit to be quashed. In view of the above discussion, the impugned orders are quashed and this application is allowed.