
(2003) 11 PAT CK 0032
In the Patna High Court
Case No : Cr. Revision No. 688 of 2002

Saudagar Prasad Yadav

APPELLANT

Vs

Mukesh Yadav and Another

RESPONDENT

Date of Decision : 24-11-2003

Acts Referred:

Citation : (2003) 11 PAT CK 0032

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This revision application is directed against the order dated 29.7.2002 passed by the Sessions Judge, Begusarai in Cr. Revision No. 228 of 2002 whereby, it has set aside the order dated 30.4.2002 passed by the Sub-Divisional Magistrate, Begusarai in case No. 226 of 2002 drawing the proceeding u/s 145 of the Code of Criminal Procedure, hereinafter referred to as the Code of Criminal Procedure. By the said order, the learned Magistrate had also attached the property u/s 146(1) of the Code of Criminal Procedure

2. Short facts giving rise to the present application are that on the basis of the report given by the Officer-in-charge of Neemachandpura Police Station, a proceeding u/s 144 of Code of Criminal Procedure was initiated in respect of the land situated in village Kusmahaut, Thana No. 334. Tauji No. 650, Khata No. 632, Khesra No. 2156 having an area of 1 bigha 7 Kathas and 15 dhooors.

3. Both the parties filed their show cause. According to the First Party-Petitioner he had purchased the disputed land from the heirs of the Khatiani raiyat by registered sale deed dated 24.5.1999 and 26.5.1999 and after the purchase, his name had been mutated in the revenue records. The second party in the show cause has stated that the disputed land is recorded in the name of Mir Peer Baksh in the Khatian and the heirs of the second party had amalgamated the land in question with their own land and are in its possession. The second party in the show cause have also stated that the Petitioner, on 26.5.1999 had admitted that he had been dispossessed from the disputed land. The learned Magistrate, by order dated 30.4.2002, converted the proceeding u/s 145 of the

Code of Criminal Procedure attached the land u/s 146(1) of the Code of Criminal Procedure and appointed the Officer-in-charge of Neemchandpura Police Station as the receiver.

4. The second party-opposite party Nos. 1 and 2, aggrieved by the same, preferred Cr. Revision No. 228 of 2002 and the learned Sessions Judge, Begusarai, by the impugned order dated 29.7.2002, allowed the revision application set aside the order of the learned Magistrate and while doing so, he observed that according to the 1st party itself, he was disposed by the second party before 26.5.1999 and as such, the proceeding u/s 145 of the Code of Criminal Procedure was not fit to be initiated.

5. Mr. Pramod Kumar Sinha appearing on behalf of the Petitioner submits that, revisional court was incompetent to go into the sufficiency of the materials to set the order of the learned Magistrate drawing up the proceeding u/s 145 of the Code of Criminal Procedure. He points out that the revisional court cannot go into the sufficiency of the material and the same is primarily within the domain of the learned Magistrate. In support of his submission, he has placed reliance on a judgment of Supreme Court in the case of R.H. Bhutani Vs. Miss Man J. Desai and Others, and my attention has been drawn to para-9 of the judgment which reads as follows:

The satisfaction under Sub-section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the Sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.

6. Yet another decision on which Mr. Sinha has placed reliance is the judgment of the Supreme Court in the case of Rajpati Vs. Bachan and Another, and my attention has been drawn to the following passage from para-6 of the judgment, which reads as follows:

6. xxx The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied on these two conditions, the section requires him to pass a preliminary order under Sub-section (1) and thereafter to make enquiry under Sub-section (4) and pass a final order under Sub-section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist. The enquiry u/s 145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties.... The

High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.

7. Mr. Pramod Manbansh appearing on behalf of Opposite Party Nos. 1 and 2 submits that according to the Petitioner's own showing at the time of passing the preliminary order, Petitioner on his showing was dispossessed on 26.5.1999 and as such, the learned Magistrate erred in drawing up the proceeding u/s 145 of the Code of Criminal Procedure on 30.4.2002.

8. Having appreciated the rival submissions, I do not find any substance in the submission of Mr. Sinha. The whole assumption of the Petitioner that the regional court had gone into the sufficiency of the material is absolutely misconceived. While drawing up the proceeding u/s 145 of the Code of Criminal Procedure certain jurisdictional facts must exist and one of those are that both the party are asserting possession over the disputed land. As stated earlier, according to the Petitioner's own showing, he was dispossessed from the land on 26.5.1999 and as such, jurisdictional facts for drawing up a proceeding u/s 145 of the Code of Criminal Procedure did not exist. Taking note of the said fact, the revisional court set aside the order of the learned Magistrate drawing up the proceeding u/s 145 of the Code of Criminal Procedure. I do not find any error in the same.

9. Any observation either made by the learned Sessions Judge or by me is for the purpose of disposal of the revision application and shall have no bearing in case either party takes recourse to any other proceeding.

10. Application stands dismissed with the observations aforesaid.