
(2002) 07 PAT CK 0107

In the Patna High Court

Case No : Criminal Miscellaneous No. 24154 of 2000

Smt. Indira Sinha and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

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

Citation : (2002) 2 BLJR 1657

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.—After 144 proceedings were converted into 145 proceedings with an observation by the S.D.M. that the apprehension of breach of peace continues, the present applicants felt aggrieved and came to this Court, inter alia, making complaint that as a civil suit is already filed by applicant No. 1 against the interest of Opp. Party No. 2 the continuation of the criminal proceedings are bad. it is also contended that as the civil suit would decide the title and question of possession of the parties, the Magistrate should not be allowed to interfere in the matter under some recourse. Placing reliance upon some of the judgments it was further contended that when the civil proceedings have already been initiated by one of the parties then initiation or continuance of criminal proceedings u/s 145, Cr.P.C. would be contrary to law.

2. From the order, dated 16.6.2000 it would clearly appear that the learned S.D.M. had recorded a positive finding that the apprehension of breach of peace subsists learned Magistrate recorded that the possibility of breach of peace cannot be ruled out.

3. It is not in dispute before me that applicant No. 2 had instituted the suit seeking relief that her right, title and interest be declared in the property and her possession be confirmed. In the relief paragraph (d) it has been submitted that if

she is found dispossessed then the possession be ordered to be restored. It is also not in dispute before me that at this stage no interim order either for grant of injunction or for attachment or for appointment of receiver has been passed by the Civil Court either on the application of the plaintiff-appellant No. 1 or defendant-respondent No. 2. An order u/s 145 Cr.P.C. a sold saying says is not simply a police order but a quasi judicial order which is required to be passed after taking into consideration the exigencies and urgencies. When an order whether interim or final is passed under Sections 145 or 146 Cr.P.C. then such an order is final subject to an order which may be passed by the competent civil Court. It is riot correct to say that once the parties go to the Civil Court then the Criminal Court would withdraw its jurisdiction and leave the parties to fight on the roads on question of possession.

4. If the parties approaching the Civil Court asserts possession and pray for injunction then obviously such an injunction order would override the effect and operation of the order whether interim or final passed by the Criminal Court. If a Criminal Court makes an order for appointment of receiver and such an order is challenged before the Civil Curt and the Civil Court declares as an interim measure the possession of one of the parties and issues on injunction then the order passed by the Criminal Court not continue to have the effect. The law laid down by the different Courts including the Apex Court is clear on the subject. The law is that if the parties have gone to the Civil Court and the Civil Court has passed some interim order in relation to possession or maintenance of possession then the Criminal Court would not proceed further in the matter. But, in a case when none of the parties have prayed before the Civil Court to grant some interim relief relating to possession then the Magistrate would not be denuded of his jurisdiction. The law would not allow the cession of jurisdiction because the Magistrate would still be answerable to maintenance of law and order and will have to show his concern about the apprehension relating to breach of peace.

5. The proceedings u/s 145, Cr.P.C. certainly can be closed down, if the Civil Court passes any order in the present matter. In absence of any interim order by the Civil Court, the Magistrate certainly can proceed with the matter. I find no reason to interfere. The petition is dismissed.