

(2017) 11 JH CK 0028
In the Jharkhand High Court
Case No : 699 of 2010

Somay Soren

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 24-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 145](#), [Section 146\(1\)](#) - Procedure where dispute concerning land or water is likely to cause breach of peace - Power to attach subject of dispute and to

Citation : (2017) 11 JH CK 0028

Hon'ble Judges : B.B. Mangalmurti

Bench : SINGLE BENCH

Advocate : Ravi Raj, Shekhar Sinha

Final Decision : Dismissed

Judgement

1. Heard counsel for the parties.
2. Mr. Ravi Raj, Advocate appearing on behalf of the petitioners submitted that through the instant application the order dated 20.03.2010 passed by Sessions Judge, Dumka in Cr. Revision No.83 of 2009 has been challenged by which he has confirmed the order passed by the In-charge Sub-Divisional Magistrate, Dumka who have passed order under Section 146(1) of the Cr.P.C . and appointed Circle Officer, Sariyahat as receiver of the land in question. It is further submitted that the direction of the Sub- Divisional Magistrate, Dumka was to deposit the sale proceeds in Nazarat of Saraiyahat but in complete contravention of the provisions of law Circle Officer, Sariyahat not deposited any sale proceeds which caused perennial loss to the petitioners as well as opposite parties and also to the nation. He also submitted that earlier a proceeding under Section 145 of the Cr.P.C . was initiated against both the parties wherein this petitioners were the opposite parties.
3. Aggrieved by the order passed by the Sub-Divisional Magistrate, Dumka

second party-petitioner preferred revision of the order which was registered as Cr. Revision No.83 of 2009. The learned Sessions Judge, Dumka vide order dated 20.08.2010 dismissed the revision application holding that there is no bar to pass an order under Section 146(1) of the Cr.P.C . The court also held that an emergency is the basis of attachment under the first limb of section 146(1) and if there is an emergency, no one can say that there is no dispute likely to cause breach of the peace.

4. Mr. Shekhar Sinha, learned A.P.P. submitted that the court of S.D.M., Dumka has every right to pass an order under Section 146(1) of the Cr.P.C . and considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute. Here in this case the Magistrate has attached the disputed land and appointed a receiver. The order of Magistrate was duly confirmed by the Sessions Judge, Dumka and confirmed the order of Sub- Divisional Magistrate, Dumka and thereby dismissed the revision application.

5. Since counsel for the petitioner could not get instruction whether the order of attachment is still continuing or the matter is pending or disposed of relating to Section 145 Cr.P.C . matter. This order is being passed on the basis of the material available on record while the instant application was filed on 01.07.2010.

6. Considering the pleadings of the parties and on consideration of the provisions as contained in Section 145 as well as Section 146(1) of the Cr.P.C . it would appear that in case of emergency the court of Sub- Divisional Magistrate is very much competent to pass order of attachment of the disputed land just to maintain the breach of peace otherwise it will affect tranquility in the society. It further appears that after due consideration of the pleadings put forward before the Sessions Judge, the Sessions Judge, Dumka also considered the order of Sub-Divisional Magistrate, Dumka Passed in the rightful manner and rightly dismissed the revision application.

7. Finding no occasion to interfere in the impugned order of revision, instant application is dismissed.