
(2013) 01 JH CK 0106
In the Jharkhand High Court
Case No : Criminal M.P. No. 1666 of 2012

Supriya Sen and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147

Citation : (2013) 2 AJR 5 : (2013) CriLJ 1750

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Anil Kumar and Sammer Saurabh, for the Appellant; J.P. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners. This application has been filed for quashing of the order dated 5.6.2012 passed in Misc. Case No. M 954 of 2012 whereby and whereunder Sub-Divisional Magistrate, Sadar Ranchi initiated a proceeding u/s 147, Cr.P.C. over a piece of land measuring 8" (length) x 36" (width) of Khata No. 186, appertaining to Plot No. 943 situated at Shukla Colony, Hinoo, Ranchi.

2. It appears that the Opp. Party Nos. 3 and 4 filed an application for initiating a proceeding u/s 147, Cr.P.C. over a piece of land measuring 8 feet in length x 36 feet in width on the allegation that said land has been encroached by these petitioners.

3. It is the case of the Opp. Party Nos. 3 and 4 that a big piece of plot bearing Plot No. 943 of Khata No. 186 was sub-divided in four parts by Krishi Bhagat for the purpose of selling it to the different persons. In the middle, land measuring 130 feet in length and 14 feet in width was left out for the purpose of using it as common road. One of the sub-Plots bearing No. 943/3 measuring an area 4.86 Kattha was purchased by Smt. Phulmati Devi, who, subsequently, sold it to Ram

Chandra Choudhary in the year 1996. Thereafter said Ram Chandra Choudhary sold that land to Smt. Sushila Mehta (O.P. No. 3) and Shashi Agarwal (O.P. No. 4) and that land bearing Plot No. 943/4 had been purchased by these petitioners and was in possession from before. The allegation was made that these petitioners having encroached part of the said road to the extend of 8 feet in length and 36 feet in width, got a gate fixed, as a result of which, 1st party and other persons are facing much difficulty.

4. On filing of such application, a report was called for from the Doranda Police Station. Accordingly, one S.I. made an inquiry and reported that the petitioners have encroached the land 8 feet in length and 36 feet in width and has fixed a gate over there.

5. On said report, impugned order was passed, which is under challenge.

6. Mr. Anil Kumar, learned counsel appearing for the petitioners submits that the order is quite bad, as it is never there in the report of Police that on account of dispute relating to passage, there has been apprehension of breach of peace nor any averment relating to breach of peace is there in the application filed by the 1st party and as such the order passed by the Sub Divisional Magistrate Sadar Ranchi is bad.

7. Further it was submitted that in fact, the petitioners had not made any encroachment whatsoever, as the petitioners had put structure over the land, which the petitioners' mother had purchased in the year 1965 and since then, they are in possession.

8. In this respect, it was further submitted that S.I. of Police, while submitting report, was himself not satisfied as to whether any encroachment had been made by these petitioners as he had made request to the court to get the measurement be done by an Amin but before any measurement was made by any Amin, the order has been passed initiating a proceeding u/s 147, Cr.P.C., though there has been absolutely no material to show that there was apprehension of breach of peace on account of dispute relating to passage and on account of this, the order suffers from illegality and hence, is fit to be set aside.

9. Having heard learned counsel appearing for the petitioners and on perusal of the record, I do find substance in the submission made on behalf of the petitioners.

10. In the application filed before the SDM, Sadar Ranchi for initiating a proceeding u/s 147, Cr.P.C., there does not seem to be any averment that the dispute with respect to same land (8" length x 36 width), which was there in between the parties, is likely to cause breach of peace nor such statement is there in the police report.

11. Under the circumstances, it can be said that no material was there before the Magistrate to come to the conclusion that the dispute was likely to cause breach

of peace. Still the Magistrate in its order has recorded that the dispute is likely to cause breach of peace between the parties and, therefore, that finding/ observation is without any basis and, hence, order passed by the Magistrate initiating a proceeding u/s 147, Cr.P.C. seems to be quite bad.

12. In this respect, I may say that for initiating a proceeding u/s 147, Cr.P.C. two essential ingredients show below should be there--

(i) there should be a bona fide dispute regarding user of any land or water;

(ii) and that dispute is likely to cause breach of peace.

13. Admittedly, there does not appear to be any material before the Magistrate for recording that the dispute was likely to cause breach of peace.

14. In the circumstances, the impugned order dated 5.6.2012 certainly suffers from illegality and hence, it is set aside. In the result, this application stands allowed.