
(1995) 05 PAT CK 0033

In the Patna High Court

Case No : Criminal Miscellaneous No. 18475 of 1994

Surendra Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-05-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144

Citation : (1995) 2 BLJR 1132 : (1995) 2 PLJR 122

Hon'ble Judges : B.N. Agrawal, J

Bench : Single Bench

Judgement

B.N. Agarwal, J.—Heard the parties.

2. This application has been filed for quashing order dated 29.11.1944 whereby proceeding u/s 144 of the Code of Criminal Procedure (hereinafter to be referred to as "Code") has been initiated and the parties have been restrained from going over the disputed land.

3. According to the petitioners, there was a partition suit in the year 1951, in which decree was passed and the disputed land was allotted to their share. According to the private opposite parties, they have filed a partition suit in respect of disputed land, which is pending. It appears that earlier also successive proceedings were taken. When the matter was brought to this Court, this Court directed that since the order had lapsed its force, it was not necessary to dispose of the application on merit. This Court further directed that if there is apprehension of breach of peace, it will be open to the learned Magistrate to initiate a proceeding u/s 107 of the Code against the wrong doer. In view of the aforesaid facts, I am of the opinion that the learned Magistrate was not justified in initiating the proceeding u/s 144 of the Code.

4. Accordingly, this application is allowed and the proceeding u/s 144 of the Code is hereby quashed. It is directed that if during the pendency of Partition Suit No. 308 of 1982, pending in the court of Munsif Ist. Hajipur, any material is produced

before the learned Magistrate to show that there is an apprehension of breach of peace in respect to the disputed land, he shall not initiate a proceeding u/s 144 of the Code but it will be open to him to initiate a proceeding u/s 107 of the Code against the wrong doer.

5. With the aforesaid direction, this application is disposed of.