

(2008) 01 PAT CK 0073

In the Patna High Court

Case No : Criminal Miscellaneous No. 23613 of 2007

Vakil Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 146(1)

Citation : (2008) 56 BLJR 1699

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Din Bandhu Singh, for the Appellant; Jharkhandi Upadhyay, Assistant Public Prosecutor and Surendra Mohan Thakur, For O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—The second party to a proceeding u/s 144 Cr.P.C., being case No. 304 of 2005, has filed this application for setting aside the orders dated 6.5.2005 and 27.6.2005 passed therein by the learned Sub Divisional Judicial Magistrate, Mahua, whereby he has first converted the said proceeding into one u/s 145 Cr.P.C. and secondly, has attached the property under the provisions of Section 146(1) Cr.P.C. and has appointed a receiver. A prayer has also been made to quash the order dated 13.2.2007 passed by the learned Sessions Judge, Vaishali at Hajipur, in Criminal Revision No. 171 of 2005 whereby he has dismissed the revision preferred against order dated 6.5.2005.

2. It appears that on the basis of a report received from the Police Inspector, Mahua, a proceeding u/s 144 Cr.P.C. was initiated by the Sub-Divisional Magistrate in respect of 7 acres 66 decimals of land spread over 25 plots of khata No. 106 in mauza Hakimpur within Mahua P.S. and both the parties were noticed. It further appears that whereas the first party appeared and filed its show cause along with supportive documents, the second party merely appeared but did not file any show cause or documents. It also appears that whereas the first party participated at the arguments, the second party curiously abstained therefrom.

The learned Magistrate on consideration of the materials available on record and hearing the submissions of the first party formed an opinion that there was apprehended danger of breach of the peace between the parties over taking possession of the lands in question and accordingly converted the proceeding into one u/s 145 Cr.P.C. by order dated 6.5.2005. The said order was impugned in Cr. Rev. No. 171 of 2005 before the Sessions Judge which was dismissed by order dated 13.2.2007 on a finding that the learned Magistrate had recorded his satisfaction for converting the proceeding. He also noticed the disinclination of the second party to participate before the Magistrate and file his documents in support of his claim of the lands in dispute being joint family property and advance his submissions in that regard. It further appears that the matter of attachment was neither impugned nor assailed in the revision although the order thereof became available during the pendency of the revision.

3. A four-pronged attack has been made by the learned Counsel for the petitioner in assailing the impugned orders. It was first submitted that the learned Magistrate was legally bound to record his satisfaction before converting the proceeding into one u/s 145 Cr.P.C. but he had failed to do so and this by itself was sufficient to set aside the order.

4. I am unable to accept the submissions advanced by the learned Counsel in view of the decisions of *Khedu Mahto v. Smt. Prem Sundari* 1976 PLJR 187 wherein it was held that non mention in the 145 order converting the proceeding as to the satisfaction of the Magistrate in respect of apprehension of the breach of peace does not vitiate the order. Even otherwise, the Magistrate in the said order has spelt out his satisfaction and I find no illegality therewith.

5. It was next sought to be submitted that order u/s 146(1) Cr.P.C. smells of doubt and bias and was against natural justice inasmuch as it was passed on the very next day following filing of the petition without holding any enquiry or noticing the petitioner.

6. The learned Counsel may be right in his submissions but he himself is responsible for the same by not participating in the proceeding before the Magistrate. Now he cannot turn round and make a grievance of the same.

7. The learned Counsel next sought to submit that the learned Magistrate as also the learned Sessions Judge had failed to appreciate that when a civil proceeding with regard to the same lands was pending between the parties, no proceeding u/s 145 Cr.P.C. could be initiated and that too when the parties had joint possession over the lands in dispute.

8. It is true that possession of one co-sharer of joint family property is possession of other co-sharers and unless there is partition by metes and bounds or there is a case of ouster, every co-sharer in law is deemed to be in possession of every little fraction of joint family property. But the duty lay with the petitioner to point out that the lands in dispute were joint family property. However, when the opportunity to point out the same was available to him he neither filed a

show cause nor raised the plea of the disputed land being joint family property and that a civil suit was pending between the parties in respect thereof. As a matter of fact the learned Sessions Judge did take into notice these facts and has directed him to file his show cause and supportive documents before the learned Magistrate which the petitioner has not cared to obey and has rushed to this Court.

9. It has finally been submitted that the opposite party herein had suppressed material facts inasmuch as he did not mention that he had already filed C.W.J.C. No. 12799 of 2005 before the High Court for the same relief and that the same was pending.

10. The learned Counsel for the opposite party herein has filed a photo copy of order dated 6.7.2007 disposing of C.W.J.C. No. 12799 of 2005. The case has been remanded back to the Director Consolidation.

11. It is not clear from the same as to whether the parties and the lands in dispute are the same and what happens to be the subject matter of dispute therein.

12. In these circumstances no relief can be granted to the petitioner who would do well to appear before the learned Magistrate and raise all these issues.

In the result there is no merit in this application which is dismissed.