

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4170 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Surendra Yadav, Son of Shri Mahesh Yadav, Resident of Village- Mathurapur,
Police Station- Mathurapur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
- 2.1. Vijay Yadav S/o Late Sitaram Yadav R/o vill- Mathurapur, P.S - Bhawanipur (Bihpur), Distt.- Bhagalpur
- 2.2. Ajay Yadav S/o Late Sitaram Yadav R/o vill- Mathurapur, P.S - Bhawanipur (Bihpur), Distt.- Bhagalpur
- 2.3. Raja Yadav S/o Late Sitaram Yadav R/o vill- Mathurapur, P.S - Bhawanipur (Bihpur), Distt.- Bhagalpur
- 2.4. Baleshwar Yadav S/o Late Sitaram Yadav R/o vill- Mathurapur, P.S - Bhawanipur (Bihpur), Distt.- Bhagalpur
- 3.1. Subhash Yadav S/o Late Maheshwari Yadav R/o vill- Mathurapur, P.S - Bhawanipur, (Bihpur), Distt.- Bhagalpur
- 3.2. Sagar Yadav @ Prem Kumar Yadav S/o Late Maheshwari Yadav R/o vill- Mathurapur, P.S - Bhawanipur, (Bihpur), Distt.- Bhagalpur
- 3.3. Santosh Yadav S/o Late Maheshwari Yadav R/o vill- Mathurapur, P.S - Bhawanipur, (Bihpur), Distt.- Bhagalpur
4. Sudhir Yadav S/o Late Bhusi Yadav R/o vill- Mathurapur, P.S - Bhawanipur, Distt.- Bhagalpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vikram Singh, Advocate
For the O.P. No. 4	:	Mr. Shashi Shekhar, Advocate
For the State	:	Mr. Ajit Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-11-2025

Heard Mr. Vikram Singh, learned counsel
appearing on behalf of the petitioner; Mr. Shashi Shekhar,
learned counsel for the O.P. No. 4 and Mr. Ajit Kumar, learned
A.P.P. for the State.

2. The petitioner has preferred application under



Section 482 Cr.P.C. for quashing of order dated 17.05.2016 passed by the Executive Magistrate, Naugachia in Miscellaneous Case No. 296 of 2008 (T. R. No. 05/16) against the petitioner and order dated 24.07.2017 passed by the learned 1st Additional Session Judge, Naugachia in Criminal Revision No. 95 of 2016, by which the order dated 17.05.2016 was affirmed.

3. The prosecution story in brief is that both the parties, who are agnate, have claimed their possession and title over a land relating to Khata No. 221, Khesra No. 2169 measuring 24 decimal, on which, both the parties had constructed temporary house. It has been alleged by the opposite party that the petitioner had conspired and had tried to construct permanent house over the said land and after protest by the opposite party, the petitioner had abused him. Thereafter, the opposite party had approached the police station, who had recommended for initiation of proceeding under Section 144 Cr.P.C. against the petitioner and had also lodged criminal case against him.

4. Learned counsel appearing on behalf of the petitioner submitted that the after service of notice under Section 144 Cr.P.C., the petitioner and other accused had



tendered their appearances and filed show cause denying the allegation levelled against them by the opposite party relating to possession of disputed land and had claimed their possession over the said land as the petitioner had constructed his house much earlier to the initiation of proceeding under Section 144 Cr.P.C. He further submitted that there is no dispute over the possession of the disputed land, rather, it relates to entries made during survey of operation in which, name of both the parties were entered by the review authority and taking advantage of that entries, the opposite party had tried to create a case of dispute relating to possession of the aforesaid land, upon which, both the parties have constructed their residential houses. He further submitted that learned District Court, without considering the show cause of the petitioner and the documents produced, had converted the proceeding under Section 145 of the Cr.P.C. on 16.08.2008 and directed the parties to file written statement. On 30.04.2015, the proceeding was transferred from the Sub-Divisional Magistrate, Naughachiya to the Court of learned Executive Magistrate, Naugachiya, who without serving fresh notice under Section 145 Cr.P.C. had proceeded ex-parte against the petitioner and examined the witnesses of the opposite party and passed an ex-parte order dated 17.05.2016 in



Miscellaneous Case No. 296 of 2008 (T. R. No. 05/16). The petitioner aggrieved by the ex-parte order dated 17.05.2016, filed Revision before the learned 1st Additional Session Judge, Naugachia in Criminal Revision No. 95 of 2016, who vide order dated 24.07.2017, without analysing and applying his mind, affirmed the order dated 17.05.2016. Learned counsel has questioned both the aforesaid orders before this Court.

5. *Per contra*, learned counsel appearing on behalf of the opposite party no. 4 submitted that the S.D.O. had exercised his jurisdiction and upon enquiry, after being satisfied, he had concluded on the basis of the evidences and the specific entry of name of the opposite party in the *Khatian* in respect of Khata No. 221, Khesra No. 2169 measuring total area 24 decimal. He further submitted that both the S.D.O., Naugachia and the Revisional Court, have not erred in passing the impugned orders, which is based on actual possession of the opposite party over the land in question.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, having perused the informations contained in the application filed before the S.D.O., Naugachia, which relates to determination of possession



over a piece of land relating to Khata No. 221, Khesra No. 2169 measuring total area 24 decimal. Both the parties are agnates. Record reveals that there was a partition between both the sides and after partition, respective parties had constructed their temporary houses over the land described as above. It has been alleged by the opposite parties that petitioner had tried to construct permanent house over the joint property, to which, the opposite party had protested and petitioner had abused them. The opposite party had approached the local police station, who recommended for initiation of proceeding under Section 144 Cr.P.C. against the petitioner and others as well as, criminal case also. The proceeding under Section 144 Cr.P.C. was initiated in the Court of Sub-Divisional Magistrate, Naugachia.

8. It is the case of the petitioner that taking advantage of the Survey Amin, the opposite party, on the basis of incorrect entry of the name of their ancestor, started with the dispute in respect of possession of the aforesaid piece of land. The petitioner claims his possession and title over the said piece of land, which is subject matter of dispute between the parties. The challenge to the order passed by the Sub-Divisional Magistrate is on the ground that S.D.O. has proceeded to decide the title of the petitioner on the basis of the entry made in the



Khatiyan and has given complete go by to the procedure established by law. The procedure prescribed under Sections 144 and 145 Cr.P.C. are relevant to decide the present case, which are reproduced hereinafter:

"144. Power to issue order in urgent cases of nuisance or apprehended danger.

(1) In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this Section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this Section may be directed to a particular individual or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this Section shall remain in force for more than two months from the making thereof :Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved,



rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

[144-A. Power to prohibit carrying arms in possession or mass drill or mass training with arms [Inserted by (Amendment) Act, 2005, Section 16.]

(1) The District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by public notice or by order, prohibit in any area within the local limits of his jurisdiction, the carrying of arms in any possession or the organising or holding of, or taking part in, any mass drill or mass training with arms in any public place.

(2) A public notice issued or an order made under this Section may be directed to a particular person or to persons belonging to any community, party or organisation.

(3) No public notice issued or an order made under this Section shall remain in force for more than three months from the date on which it is issued or made.

(4) The State Government may, if it considers necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by notification, direct that a public notice issued or order made by the District Magistrate under this Section shall remain in force for such further period not exceeding six months from the date on which such public notice or order was issued or made by the District Magistrate would have, but for such directions, expired, as it may specify in the said notification.

(5) The State Government may, subject to such control and directions as it may deem fit to impose, by general or special order, delegate its powers under sub-section (4) to the District Magistrate.

Explanation - The word "arms" shall have the meaning assigned to it in Section 153 - AA or the Indian Penal Code, 1860].

D. Disputes as to immovable property

145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the



peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference of the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute :Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of this order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under



the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107."

9. At the stage of Section 144, there has to be an enquiry conducted by a competent officer or the magistrate concerned may on his own conduct enquiry. From the perusal of the order passed by the S.D.O., I find that there is reference that enquiry was conducted, however, from the enquiry report, which has been submitted before this Court on behalf of the opposite party no. 4, I find that there is no opinion formed by



the S.D.O. on the basis of the enquiry report submitted by the concerned police officer and Circle Officer. On perusal of the enquiry report, it cannot be said that the officers have conducted spot enquiry. The enquiry report gives finding that the land was in possession of the opposite parties on the basis of entry in the *Khatiyan*.

10. In such circumstances, the question arises, whether the S.D.O. was justified in initiating proceeding and taking action under Section 145 Cr.P.C.?

11. The petition filed under Section 144 of the Cr.P.C. by the opposite parties don't contain any description or any information, as to whether, the opposite parties have paid any rent receipt in respect of the said piece of land to show their possession. At the same time, there is no discussion in the order impugned by the SDO in respect of any evidence shown on behalf of the opposite parties. I find that the SDO in exercise of his jurisdiction in most *malafide* manner has proceeded to pass an order under influence. Based on the similar facts, I find that the law laid down by the Apex Court in case of ***Ashok Kumar v. State of Uttarakhand*** reported in ***(2013) 3 SCC 366*** almost supports the case of the petitioners and in this regard, I find it apt to place the observation made in para-13 to 16 of the



judgment passed by the Apex Court, which is as under:

“13. The ingredients necessary for passing an order under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

14. We find from this case there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant – Ashok Kumar, whether it is legal or not, is not for the SDM to decide.

15. We also notice that the respondent herein has filed a civil suit for injunction before Civil Judge (J.D.) Haridwar on 02.09.2009 and an application for interim injunction is also pending, on which the civil court has issued only a notice. An Amin report was called for and Amin submitted its report on 21.11.2009. Civil suit was filed prior in point of time, it is for the civil court to decide as to who was in possession on the date of the filing of the suit. In any view, there is nothing to show that there was an emergency so as to invoke the powers under Section 146(1) to attach the property, specially, when the civil court is seized of the matter. Under such circumstances, we are inclined to set aside the order passed by the SDM dated 25.11.2009 and the order of the High court dated 27.03.2012.

16. Learned counsel appearing for the appellant submitted that he will not change the character of the property or create third party rights in respect of the property in question till the civil court passes final orders on the application filed by the respondent for temporary injunction. The submission of the learned counsel is recorded and we direct the civil court to pass final orders on the interim application filed by the respondent for injunction. We make it clear that we have also not expressed any final opinion on the contentions raised by the learned counsel. We have however found that no ground exists to attach the property under Section 146, Cr.P.C.”

12. The petitioner side had approached the



Revisional Court by filing Criminal Revision No. 95 of 2016 under Section 397 of the Cr.P.C., who also, without considering the provision had concluded that the land in question was in possession of the opposite party, however, no reference of even rent receipt has been taken into consideration by the S.D.O. or the Revisional Court to show that the land in question was in possession of the opposite party. The action of the S.D.O. can only lead to conclude that he, in a most *mala fide* manner, had proceeded to pass order in the interest of the opposite party. Accordingly, now I proceed to consider whether the order passed under Section 145 Cr.P.C. can be justified on the above material and in exercise of jurisdiction under Section 482 Cr.P.C., the orders can be questioned, *prima facie*, if it appears that the allegation against the petitioner is essentially civil in nature. The law in this regard is well settled in the case of ***State of Haryana v. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335***.

13. The record reveals that both the parties failed to produce evidences in favour of their possession, however, it is evident from the record that the parties admit that they are in possession of their respective part. Though, it has been claimed by the opposite party that till date, no partition between the



parties have been arrived or any suit is pending for partition between the parties.

14. In such circumstances, the impugned order dated 17.05.2016 passed by the S.D.O. and order dated 24.07.2017 passed by the Revisional Court are hereby **quashed and set aside** taking into consideration that the dispute is primarily civil in nature relating to land in question and in view of the law laid down by the Apex Court that in absence of any criminal element, the criminal proceeding in cloak of civil dispute should not be allowed to proceed.

15. Accordingly, the present application stands disposed of.

16. The parties may avail appropriate remedy before the competent Civil Court.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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