

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37021 of 2016

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

Raj Kumar Prasad Singh son of Ram Lakhan Prasad Singh, resident of Village- Hasanpur, Police Station- Bahadurpur, Dist- Darbhanga at permanent resident of Village- Shekhpura, Karnauti, Police Station- Mahnar, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Harsh Kumar Prasad Singh son of Krishna Mohan Prasad Singh, resident of Village- Hasanpur, Police Station- Bahadurpur, Distt.- Darbhanga at permanent resident of Village- Shekhpura, Karnauti, Police Station- Mahnar, District- Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the O.P. No.2	:	Mr. Girijish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 01-02-2024

The present petition under Section 482 Cr.P.C. has been filed by the petitioner impugning the order dated 17.05.2016 passed by Ld. Additional Sessions Judge-II, Darbhanga in Cr. Revision Case No. 547 of 2015 and order dated 17.07.2015 passed by Ld. Sub-Divisional Magistrate, Sadar, Darbhanga in M.R. Case No. 1251 of 2015.

2. The proceeding before the Ld. Sub-Divisional Magistrate, Sadar, Darbhanga under Section 144 Cr.P.C. was initiated on the report of Officer-in-charge, Sonki O.P. bearing D.R. No. 183A of 2015, whereby Officer-in-charge had reported



that in regard of the land as mentioned below situated in Mouza- Hasanpur, Thana No.- 651, Police Station- Bahadarpur Sonki O.P., District- Darbhanga, there is dispute between Harsh Kumar Prasad Singh and Raj Kumar Prasad Singh as well as Nand Kumar Prasad on account of dispute regarding title and possession of the landed property bearing Khata No. 136, Khesra No. 168(N)/331, 332(O), 170(N)/333, 334(O), 172(N)/330(O), 339(N)/323,324(O), measuring area 60 decimal, 27 decimal, 78 decimal and 43 Acre 16 decimal respectively. Officer-in-charge had reported that on account of claim and counter claim to the land in question, there is apprehension of breach of piece. In view of the aforesaid report of Officer-in-charge, Ld. Sub-Divisional Magistrate, Sadar, Darbhanga converted the proceeding under Section 144 Cr.P.C. into proceeding under Section 145 Cr.P.C. holding that in view of the facts and circumstances of the case, it appears that there is possibility of breach of peace and, hence, for permanent solution of the dispute, proceeding under Section 145 Cr.P.C. is required to be initiated. Against the aforesaid order dated 17.07.2015 passed by Ld. Sub-Divisional Magistrate, Sadar, Darbhanga, the petitioner herein preferred Cr. Revision bearing No. 547 of 2015. However after hearing both the parties, Ld.



Additional Sessions Judge-II, Darbhanga upheld the order dated 17.07.2015 passed by Ld. Sub-Divisional Magistrate, Sadar, Darbhanga. Being aggrieved by the aforesaid orders, the petitioner has preferred the present petition.

3. Ld. Counsel for the petitioner submits that the land in questions is in possession of the petitioner. This land has come in the share of the petitioner after partition in the family. He further submits that even otherwise there is no occasion for initiating proceeding under Section 145 Cr.P.C. because this extraordinary jurisdiction under Section 145 Cr.P.C. can be initiated only in circumstances of apprehension of breach of public peace on account of forceful dispossession of the landed property. But even the report of the police or the impugned order passed by Ld. Sub-Divisional Magistrate, Sadar, Darbhanga, do not disclose any such circumstances which may lead to apprehension of breach of public peace on account of forceful dispossession of the property. At most, there is purely a private civil dispute between the parties for resolution of which they can move Civil Court and even get interim appropriate order during the pendency of the suit. But Ld. Sub-Divisional Magistrate, Sadar, Darbhanga has no jurisdiction to initiate the proceeding under Section 145 Cr.P.C. in the given facts and



circumstances of the case and hence, it is liable to be quashed. Ld. counsel for the petitioner also refers to and relies upon ***Yugal Kishore Choudhary v. State of Bihar*** as decided by this Court and as reported in **2023 (6) BLJ 360**.

4. However, Ld. APP for the State defends the orders of the Ld. Sub-Divisional Magistrate as well as Ld. Additional Sessions Judge-II, Darbhanga.

5. Ld. counsel for the O.P. No.2 also vehemently supports the impugned orders passed by Ld. Sub-Divisional Magistrate and Ld. Additional Sessions Judge-II, Darbhanga submitting that the O.P. No.2 is in possession of the property in question. However, the petitioner herein is forcibly trying to dispossess him and harvest the standing crop on the land.

6. This Court in ***Yugal Kishore Choudhary (supra)*** has elaborately discussed the scope and extent of jurisdiction under Section 145 CrPC. In this case, this Court has held as follows:-

“9. Section 145 Cr. P.C. is the part of Chapter X of the Code of Criminal Procedure, 1973 dealing with maintenance of public order and tranquility. Section 145 Cr. P.C. is the part of Sub Chapter D dealing with disputes as to immovable property. Besides Section 145 Cr.P.C., Section 146, 147 and 148 Cr. P.C. are also part of Sub Chapter D of Chapter X of Cr. P.C. It is found that disputes over the land and water often results in breach of the peace, violence and bloodshed, the Executive Magistrates have been empowered under Section 145-148 to intervene at an incipient stage of such a dispute and to compel the disputants to have recourse to legal remedies. If, upon a report of a police officer or upon other information, an



Executive Magistrate is satisfied that a dispute concerning any land or water or the boundaries thereof exists within his jurisdiction, and that such dispute is likely to cause a breach of the peace, he shall make an order in writing requiring the parties concerned in such dispute to attend to his court on a specified date and time, and to put in written statements of their claims regarding the fact of actual possession of the subject of dispute. While making such order, the Magistrate shall state the grounds for his satisfaction referred to above. The very foundation of the jurisdiction of a Magistrate in cases under Section 145 is based on the existence of a dispute giving rise to apprehension of breach of peace and as soon as such apprehension ceases to exist or if it never existed, the jurisdiction of the Magistrate to proceed with the case ceases and the only order he has to pass is to drop the proceedings. The enquiry under Section 145(4) is limited to the question of actual possession on the relevant date and is not concerned with the claims and merits of the parties in regard to the right to possess the subject of dispute. If the magistrate decides that one of the parties was in 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.”

7. After referring to various case laws, this Court in

Yugal Kishore Choudhary (supra), has further held as follows:-

“53. As such, it emerges from the statutory provisions of Section 145 Cr. P.C. and relevant case laws on the subject that mandate of Section 145 Cr.P.C. is that in case taking forceful possession of any property by either party leads to apprehension of breach of public peace, proceeding under Section 145 Cr. P.C should be initiated and the possession of property of the party should be protected against forceful dispossession by other party taking law in his own hand. It also manifests that apprehension of breach of public peace is sine qua non for invoking jurisdiction under Section 145 Cr. P.C. by Executive Magistrates. It is also pertinent to point out that concept of public peace and tranquility is much wider concept than that of simple problem of law and order. All law and order problems cannot be equated with breach of public peace unless it affects the public at large, like riot, affray or widespread unrest. Simple disputes between two individuals involving violation of penal laws on the part of the two cannot be termed as breach of public peace. Similarly, purely civil dispute between two individuals also cannot be treated as breach of public peace. For resolution of civil disputes between parties, there is establishment of Civil Courts in our legal framework, whereas in case of violation of criminal law, there is provision



of prosecution of such persons in criminal courts. Occasion for invoking jurisdiction under Section 145 Cr. P.C. comes to Executive Magistrate only where there is apprehension of breach of public peace and tranquility so that such breach may be nipped in the bud. However, on the pretext of apprehension of breach of public peace, Executive Magistrate is not expected to exercise jurisdiction of Civil or Criminal Courts. Such colourable exercise of jurisdiction would be against the object and spirit of Section 145 Cr. P.C. and it would render Civil and Criminal Courts irrelevant and the people would get harassed by illegal and unnecessary proceedings. In our legal framework, power and jurisdiction are defined for different instrumentalities of the State and no instrumentality is expected to exceed its jurisdiction and encroach upon that of others.”

8. Coming to the case at hand, I find that the dispute between the parties in regard to the title and possession over the land in question. Moreover there is no reference to any forceful dispossession in the report of the police, not in the ordersheet of the Ld. Sub-Divisional Magistrate whereby he has initiated proceeding under Section 145 Cr.P.C. There is bald statement of Ld. Sub-Divisional Magistrate that in view of dispute between the parties, there is possibility of breach of peace and to resolve the dispute permanently, initiation of proceeding under Section 145 Cr.P.C. is required. No basis has been disclosed by the Ld. Sub-Divisional Magistrate how there is apprehension of breach of peace. The alleged facts and circumstances clearly shows that this is a classic case of civil dispute between the parties and it is the only Civil Court, which have jurisdiction to deal with the issue. In case of requirement of any interim relief, the parties can pray for interim measures.



There is no occasion to resort to jurisdiction under Section 145 Cr.P.C. by Ld. Sub-Divisional Magistrate. This is colorable exercise of power by Ld. Sub-Divisional Magistrate usurping the jurisdiction of Civil Court, which cannot be permitted.

9. As such, the impugned order dated 17.05.2016 passed by Ld. Additional Sessions Judge-II, Darbhanga in Cr. Revision Case No. 547 of 2015 and order dated 17.07.2015 passed by Ld. Sub-Divisional Magistrate, Sadar, Darbhanga in M. R. Case No. 1251 of 2015 are liable to be quashed and accordingly, they are hereby quashed.

10. The present petition is allowed, accordingly.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
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