

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.391 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Siwan

1. Nand Jee Singh Son of Late Hare Ram Singh, Resident of Village - Chandparas, P.S.- M.H.Nagar (Hasanpura), Distt.- Siwan.
2. Sawaliya Singh Son of Hare Ram Singh, Resident of Village - Chandparas, P.S.- M.H.Nagar (Hasanpura), Distt.- Siwan.
3. Ravindra Kumar Singh Son of Late Pitambar Singh, Resident of Village - Chandparas, P.S.- M.H.Nagar (Hasanpura), Distt.- Siwan.
4. Jitendra Prasad Singh Son of Late Pitambar Singh, Resident of Village - Chandparas, P.S.- M.H.Nagar (Hasanpura), Distt.- Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Bikarma Ram Son Of late Suba Ram, Resident Of Village - Pakari, P.S. - M.H. Nagar (Hasanpura), District - Siwan
3. Chandrama Ram Son Of late Suba Ram, Resident Of Village - Pakari, P.S. - M.H. Nagar (Hasanpura), District - Siwan
4. Awadhesh Ram Son Of late Suba Ram, Resident Of Village - Pakari, P.S. - M.H. Nagar (Hasanpura), District - Siwan
5. Mosafir Ram Son Of Late Ganga Ram, Resident Of Village - Pakari, P.S. - M.H. Nagar (Hasanpura), District - Siwan

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Singh, Advocate
For the State : Mr. Chandra Sen Prasad Singh, APP
For the O.P. Nos. 2 to 5 : Mr. Udit Narayan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 20-02-2025

The present revision petition has been preferred by the petitioners against the impugned order dated 30.11.2018 passed by learned Additional District & Sessions Judge-VI, Siwan in Criminal Revision No. 44 of 2001, whereby learned Sessions Court has allowed the revision petition setting aside the



impugned order dated 16.11.2000 passed by learned Executive Magistrate, Maharajganj in proceeding initiated under Section 145 Cr.PC in Trial No. 22 of 2000 and possession of first party Suba Ram over the disputed land is confirmed and the second party who are petitioners herein are directed not to interfere in the possession of the first party over the land in question.

2. The factual background of the case is that in view of report dated 15.10.1988 of Officer-in-charge of local Police Station, proceeding under Section 144 Cr.PC was initiated. As per the report, there was tension prevailing between two parties on account of land dispute. However, subsequently by the order dated 31.12.1988, the proceeding under Section 144 Cr.PC was closed and proceeding under Section 145 Cr.PC was initiated after hearing both the parties.

3. As per the preliminary order dated 31.12.1988, whereby the proceeding under Section 145 Cr.PC has been initiated, both the parties admit that khatiyani raiyat of the land in question is Jita Chamar. However, the first party Suba Ram claims that he is legal heir/successor of said Jita Chamar. He is also claiming that he is in possession of the property in question. As per his claim, some house are also built over some part of the land. However, as per second party, who are petitioners herein,



they have got this land in execution of mortgage decree and they are also paying land revenue to the Government. Hence, learned S.D.M. found that there is dispute between the parties in regard to possession and it is not possible for him to decide who is in actual possession, hence, requiring enquiry under Section 145 Cr.PC.

4. During proceeding under Section 145 Cr.PC, both the parties filed their written statements and examined their witnesses in support of their claim. After inquiry, learned S.D.M. came to the conclusion by the order dated 16.11.2000 that second party who are petitioners herein were in possession of the land in dispute and first party who are O.P. Nos. 2 to 5 herein are restrained from creating disturbance in the peaceful possession of the second party till any order by competent Civil Court in this regard.

5. Subsequently, the first party Suba Ram preferred criminal revision bearing No. 44 of 2001 wherein learned Sessions Court set aside the order of Executive Magistrate dated 16.11.2000 vide his order dated 26.08.2011. Against the said order dated 26.08.2011, the petitioners herein preferred Criminal Revision bearing No. 1121 of 2012 before this Court, wherein this Court set aside the said order dated 26.08.2011 passed by



learned Sessions Court and remitted the matter to the Sessions Court to decide the matter afresh in accordance with law. Subsequently, the impugned order has been passed whereby learned Sessions Court allowed the criminal revision setting aside the impugned order dated 16.11.2000 passed by learned Executive Magistrate, Maharajganj and held that it is the first party Suba Ram who is in possession of the property in question.

6. I heard learned counsel for the petitioners and learned APP for the State as well as learned counsel for the O.P. Nos. 2 to 5.

7. Learned counsel for the petitioners submits that the impugned order passed by learned Sessions Court is not sustainable in the eye of law. To substantiate his submission, he further submits that learned Sessions Court has wrongly held that O.P. Nos. 2 to 5, who are legal heirs of first party before learned S.D.M., are in possession of the subject property. As a matter of fact, it is the petitioners who have title to the property as they have got this property in execution of a decree and they are also in possession of the same. They are also paying land revenue to the Government.

8. He further submits that as per the facts and



circumstances, the proceeding under Section 145 Cr.PC before learned Executive Magistrate was not maintainable because as per the facts and circumstances, there was no apprehension of any breach of public peace, which is *sine qua non* for invoking jurisdiction under Section 145 Cr.PC by learned Executive Magistrate. As per the facts and circumstances, there is only dispute regarding title and possession between the parties to the dispute. Hence, there was no occasion for learned Executive Magistrate to invoke his jurisdiction.

9. However, learned APP for the State and learned counsel for the O.Ps. No. 2 to 5 submit that there is no illegality or infirmity in the impugned order and hence, the present petition is liable to be dismissed. They further submit that the O.Ps. No. 2 to 5 are legal heirs of the first party Suba Ram, who was legal heir of khatiyani raiyat Jita Chamar and they are in possession of the property in question. They have also built house over some part of the land.

10. I considered the submissions advanced by the parties and perused the materials on record.

11. The first and foremost question is what is the extent and scope of jurisdiction of Executive Magistrate under Section 145 Cr.PC, which reads as follows:-

“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.”

(Emphasis supplied)

12. Section 145 Cr.PC comes under Chapter X of Cr.PC, 1973, dealing with maintenance of public order and tranquility and Sections 145 to 148 Cr.PC deal with dispute as to



immovable property.

13. From the perusal of Sections 145 to 148 Cr.PC, it clearly transpires that the statutory provisions therein are meant to maintain public order and peace by empowering the Executive Magistrate to take preventive measures in case of apprehension of breach of public peace on account of dispute as to actual possession of the land or water. When the Executive Magistrate is satisfied from the report of Police Officer or any other information that such dispute is likely to cause a breach of peace, he can initiate proceeding under Section 145(1) Cr.PC, stating the ground of such satisfaction and take steps to hear the parties concerned in regard to the actual possession of the subject of the dispute. However, during such hearing, the Magistrate is not required to examine title or right of any party to possess the subject of the dispute, but only to find out which of the party was in actual possession at the time of the report or the information. However, if it appears to the Executive Magistrate that any of the party has been forcefully and wrongfully dispossessed within two months next before the date on which the report or information was received by him 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 and he is empowered to restore the possession to the party so forcefully and wrongfully dispossessed and pass order forbidding of disturbance of such possession, until eviction therefrom in due course of law.

14. Hence, the inquiry under Section 145 Cr.PC is limited to the question as to who was in the actual possession on the date of the report or information, irrespective of the title to the property and right to possess the same. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of peace by submitting the dispute to the Executive Magistrate for solution as between the parties disputing the question of possession over that property. In this regard, one may also refer to the following judicial precedents:

(i) **Ashok Kumar Vs. State of Uttrakand**
(2013) 3 SCC 366

(ii) **Sharad Yadav @ Gappu Vs. State of U.P.**
2013 SCC Online All 4840

(iii) **Madhu Sharma Vs. Ajit Sharma**
(2013) 2 Gauhati Law Reports 837

(iv) **Brahmputra Iron & Steel Co. Pvt. Ltd. Vs. Premchand Tolaram Babna Charitable Trust, Assam**, 2012 Cri.L.J. (NOC) 375 (Gau)

(v) **Shanti Kumar Panda Vs. Shakuntala Devi**
(2004) 1 SCC 438

(vi) **Ranbir Singh Vs. Dalbir Singh & Ors.**
(2002) 3 SCC 700



(vii) **Prakash Chand Sachdeva Vs. P.R. & Anr.**
(1994) 1 SCC 471

(viii) **Chandu Naik Vs. Sitaram B. Naik**
(1978) 1 SCC 210

(ix) **R.H. Bhutani Vs. Mani J. Desai**
1968 SCC Online SC 5

(x) **Bhinka Vs. Charan Singh,**
AIR 1959 SC 960

15. It also emerges from the statutory provisions that the condition precedent for initiating proceeding under Section 145 Cr.PC is satisfaction of the Executive Magistrate regarding apprehension of breach of public peace on account of dispute relating to the actual possession of the subject property, as per report or information received by the Executive Magistrate. Such satisfaction must be based on ground mentioned in the preliminary order made under Section 145(1) Cr.PC.

16. It is also pertinent to point out that the concept of public peace and tranquility is much wider concept than instances of tension between few individuals arising out of private disputes between them in regard to landed property. Public order and peace affects public at large. If the effect of any dispute is confined only to few individuals who are parties to the dispute, such dispute could not give any apprehension of breach of public peace and tranquility. Such private civil disputes comes within exclusive jurisdiction of Civil Court.



Extraordinary jurisdiction under Chapter X of the Cr. P.C. has been provided to Executive Magistrates to maintain public peace and tranquility by nipping such breach in the bud.

17. Hence, the Executive Magistrates are expected to invoke their jurisdiction under Section 145 Cr.PC only in cases where there is apprehension of breach of public peace and tranquility. They should refrain from exceeding their jurisdiction and encroaching upon jurisdiction of Civil Courts. Colourable exercise of jurisdiction by Executive Magistrates would be against the object and spirit of Chapter X Cr.PC. and it would render Civil Courts redundant 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. In this regard, one may also refer to the following judicial precedents:

(i) **Md. Ansaruddin Vs. State of Assam**
(2008) Cri.L.J. (NOC) 479 (Gau)

(ii) **Chirstalin Costa Vs. State of Goa**
1993 MHLJ 1409

(iii) **Tarulata Devi Vs. Nikhil Bandhu Mishra**
1982 SCC Online Gau 35

18. The remedy for dispute in regard to title and right



to possession lies in the civil law and parties concerned are required to move Civil Court for the adjudication of their civil rights and interest. They may also get interim order for protecting the subject property by way of injunction or appointment of receiver. Only dispute regarding actual possession of the parties giving rise to apprehension of public peace and tranquility comes under jurisdiction of Executive Magistrate under Chapter X of Cr.PC.

19. Coming to the case on hand, I find that as per the order dated 31.12.1988, whereby the proceeding under Section 145 Cr.PC has been initiated by learned Executive Magistrate, it only transpires that both the parties to the dispute have rival claim regarding the title to the subject property and the possession thereof and learned Executive Magistrate did not find himself able to decide the possession of the parties over it without any inquiry and hence, proceeding under Section 145 Cr.PC was initiated. However, learned Executive Magistrate has not mentioned in his preliminary order that on account of the dispute regarding possession, public peace was likely to be breached, let alone mentioning any ground for such apprehension.

20. I have already held that only dispute regarding



actual possession of the parties giving rise to apprehension of public peace and tranquility comes under jurisdiction of Executive Magistrate under Chapter X of Cr.PC. It has been also held that the condition precedent for initiating proceeding under Section 145 Cr.PC is satisfaction of the Executive Magistrate regarding apprehension of breach of public peace on account of dispute relating to the actual possession of the subject property, as per report or information received by the Executive Magistrate. Such satisfaction must be based on ground mentioned in the preliminary order made under Section 145(1) Cr.PC. But in the case on hand, no such dispute has been mentioned in the preliminary order, nor any satisfaction of learned Executive Magistrate is referred to regarding apprehension of breach of public peace.

21. It clearly transpires that the alleged facts and circumstances constitute a private civil dispute which could be adjudicated only in the Civil Court. Learned Executive Magistrate instead of initiating the proceeding under Section 145 Cr.PC, should have advised the parties to move Civil Court for adjudication of their rights.

22. Hence, I find that there was no occasion for learned Executive Magistrate to initiate the proceeding under



Section 145 Cr.PC. It was nothing that colourable exercise of power encroaching upon the jurisdiction of the Civil Court. Hence, it was abuse of the process of the Court and liable to quashed and set aside.

23. Accordingly, the impugned order dated 30.11.2018 passed by learned Additional District & Sessions Judge-VI, Siwan in Criminal Revision No. 44 of 2001 and the criminal proceeding under Section 145 Cr.PC, initiated by learned Executive Magistrate are quashed and set aside.

24. The parties are at liberty to move the Civil Court for adjudication of their rights, if so advised.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
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