

Bishwakarma Rai Vs State Of Bihar

Court: Patna High Court

Date of Decision: Feb. 9, 2024

Acts Referred: Code Of Criminal Procedure, 1973 â€” Section 145, 145(4), 146, 147, 148, 482

Hon'ble Judges: Jitendra Kumar, J

Bench: Single Bench

Advocate: Ranjan Kumar Dubey, Kumar Gaurav, Pankaj Kumar Dubey, Suresh Prasad Singh, Shekhar Singh, Sumit Kumar, Avinash Kumar Singh

Final Decision: Dismissed

Judgement

1. The present petition under Section 482 Cr.P.C. has been preferred by the petitioners against the impugned order dated 15.07.2016 passed by Ld.

Additional Sessions Judge-IV, Gopalganj in Cr. Revision No. 146 of 1997, whereby Ld. Additional Sessions Judge has set aside the order dated

12.05.1997 passed by Ld. Executive Magistrate, Gopalganj under Section 145 Cr.P.C., whereby Ld. Executive Magistrate had declared the

possession of the petitioners over the land in dispute bearing Khata No. 413, Khesra No. 1362 measuring area 2 Katha 8 Dhur till the order is

reversed by the competent Court.

2. The relevant facts as emerging from the record are that the proceeding under Section 145 Cr.P.C. was initiated by Ld. Executive Magistrate,

Gopalganj between the petitioners and private respondents on account of dispute in relation to title and possession over the land in question bearing

Khata No. 413, Khesra No. 1362 measuring area 2 Katha 8 Dhur. Ld. Executive Magistrate, Gopalganj after recording of evidence and hearing the

parties came to the conclusion that land in question was Gairmajarua land of Hathua Maharaj, which, as per the claim of the 2nd parties, was settled in

their favour. However, it was held that as per law, Gairmajarua land cannot be settled. Hence, case of the 2nd party comes under suspicion and

hence, the first party was held to be in possession of the land in question. Second party was directed not to interfere in peaceful possession of the first

party. The order was held to be in operation till the same was set aside by the competent Court. Against the aforesaid order dated 12.05.1997 passed

by Ld. Executive Magistrate, Gopalganj, the second party preferred Criminal Revision bearing No. 146 of 1997 before Sessions Court. Ld. Additional

Sessions Judge-IV, Gopalganj by the impugned order dated 15.07.2016 passed in Cr. Revision No. 146 of 1997, set aside the order passed by Ld.

Executive Magistrate, Gopalganj holding that Executive Magistrate is not competent to inquire into title of the parties before himself and hence, the

order passed by Ld. Executive Magistrate was vitiated and accordingly, it was set aside. Being aggrieved by the order of Ld. Additional Sessions

Judge-IV, Gopalganj, the present petition has been preferred.

3. Ld. counsel for the petitioners (the first party before the Executive Magistrate) submits that the impugned order dated 15.07.2016 passed in Cr.

Revision No. 146 of 1997 by the Ld. Addl. Sessions Judge-IV, Gopalganj is not sustainable in the eye of law. Ld. Executive Magistrate is competent

to look into title and possession of the land in dispute and there was no infirmity in the order passed by Ld. Executive Magistrate. Hence, as per Ld.

counsel for the petitioners, impugned order dated 15.07.2016 passed by Ld. Additional Sessions Judge-IV is not sustainable in the eye of law.

4. However, Ld. counsel for the private respondents submits that the whole proceedings before Ld. Executive Magistrate was abuse of the process of

the Court because the alleged facts and circumstances of the case do not provide any occasion to Ld. Executive Magistrate to resort to jurisdiction

under Section 145 Cr.P.C. and whole proceedings and order passed under Section 145 Cr.P.C. is without any jurisdiction and it is liable to be quashed.

He further submits that as per the alleged facts and circumstances of the case, there is dispute between the parties in regard to title and possession

over the land in question. There is no allegation that there was any forceful dispossession by either of the parties. He further submits that only in case

of forceful dispossession or efforts of forceful dispossession giving rise of apprehension of breach of public peace and tranquility gives jurisdiction to

Ld. Executive Magistrate under Section 145 Cr.P.C. Ld. Addl. Sessions Judge-IV has rightly set aside the order dated 12.05.1997 passed by Ld.

Executive Magistrate under Section 145 Cr.P.C.

5. Ld. APP for the State also defends the impugned order dated 15.07.2016 passed in Cr. Revision No. 146 of 1997 by the Ld. Addl. Sessions Judge-

IV, Gopalganj submitting that in the alleged facts and circumstances of the case, Executive Magistrate has no jurisdiction to initiate proceeding under

section 145 Cr.P.C. and pass order, because, as per the facts and circumstances of the case, it is classic civil dispute between the parties and the

appropriate forum for the parties for adjudication of their dispute is Civil Court and not Executive Magistrate. Ld. APP for the State also refers to and

relies upon Yugal Kishore Choudry vs. State of Bihar as decided by this Court and as reported in 2023 (6) BLJ 360.

6. Before I consider the rival submissions of the parties, it is imperative to know ambit and scope of jurisdiction under section 145 Cr.P.C.

7. This Court in Yugal Kishore Choudhary (supra) has elaborately discussed the scope and extent of jurisdiction under Section 145 Cr.P.C. 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.”

8. 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.Ã¢â‚¬â€

9. Coming to the case at hand, I find from the perusal of the order dated 12.05.1997 passed by Ld. Executive Magistrate under Section 145 Cr.P.C. is

that there is no reference to any forceful dispossession of any party from the land in question, nor there is any allegation of even attempt to have been

made for forceful dispossession by either of the parties. Only dispute between the parties is in regard to title and possession over the land in question.

As such, it is a classic civil dispute between the parties and public at large are no way involved in the dispute giving rise of apprehension of public

peace. Hence, there was no occasion for Ld. Executive Magistrate to invoke the extraordinary jurisdiction as provided under Section 145 Cr.P.C. The

resort to Section 145 Cr.P.C. by Ld. Executive Magistrate is colourable exercise of power usurping jurisdiction of Civil Court, which is not permissible

in our legal framework. Hence, the whole proceedings under Section 145 Cr.P.C. is accordingly, abuse of the process of the Court. As such, Ld.

Additional Sessions Judge-IV has rightly set aside the impugned order dated 12.05.1997 passed by Ld. Executive Magistrate.

10. The parties should approach competent Civil Court for redressal of their dispute between themselves. They may also apply for interim relief, if

required as per the facts and circumstances of the case.

11. Hence, the present petition is dismissed upholding the impugned order dated 15.07.2016 passed by Ld. Additional Sessions Judge-IV, Gopalganj in

Criminal Revision No. 146 of 1997.