

(2012) 04 JH CK 0030

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 145 of 2009

Uttam Devi and Harendra Singh

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: April 30, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 144, 147, 47

Hon'ble Judges: H.C. Mishra, J

Bench: Single Bench

Advocate: R.S.P. Sinha, Mr. Rakesh Kr. Sinha and Mr. R.N. Roy, G.P.-III, for the State, for the Appellant; V. Shivnath and Mr. Neeraj Kishore, Advocate in Respondent No. 2 to 5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

H.C. Mishra

1. Heard learned counsel for the petitioners and learned counsel for the State as also learned counsel for the private respondents. This application has been filed by the petitioners against the order dated 03.02.2009 passed by the learned Additional Judicial Commissioner-XVI, Ranchi in Cr. Rev. No. 84 of 2006, whereby the revision filed against the order dated 04.01.2006 in the Case No. M-36 of 2004 u/s 147 of the Cr.P.C. by the S.D.M., Sadar, Ranchi, wherein the petitioners being the second party in the proceeding were directed to remove the encroachment over the road in question, was rejected by the learned revisional Court below.

2. It appears that a proceeding u/s 144 of the Cr.P.C. was initiated between the parties on 17.01.2004 restraining both the parties from going over the land in question. It also appears that by order dated 12.03.2004, the said proceeding u/s

144 of Cr.P.C. was converted into Section 147 of the Cr.P.C. by learned S.D.M., Sadar, Ranchi. The order dated 12.03.2004 reads as follows;-

12.03.04 Pratham Paksh anupasthit Dwitinya paksh anupasthit Waad 147 me pariwartit kiya jata hai Abhilekh ko Sri Anup Sharam ke Nyayalay me bheje. Dinank 18.03.2004 ko upasthit kare.

3. Thus, from the perusal of the order dated 12.03.2004, it is apparent that the Executive Magistrate has not recorded his subjective satisfaction either on the basis of any report of the police officer or upon any information that there was a dispute likely to cause a breach of peace existing between the parties. Without recording any such satisfaction, rather only stating that both the parties were absent, the proceeding was converted into one u/s 147 of the Cr.P.C. By the subsequent order dated 04.01.2006, after examining the evidence adduced by both the parties, the court below has directed the petitioners, who were the second party in the proceeding u/s 147 of the Cr.P.C. to remove the encroachment from the road in question.

4. Learned counsel for the petitioners has raised a very short point for challenging the orders passed by the Courts below. Learned counsel has submitted that the order dated 12.03.2004 passed by the learned S.D.M. Sadar, Ranchi and the further proceeding u/s 147 of the Cr.P.C. were absolutely illegal, in as much as, the court below had not applied its judicial mind and had mechanically converted the proceeding into one u/s 147 of the Cr.P.C., when both the parties were admittedly absent. Learned counsel has submitted that Section 47 of the Cr.P.C. clearly prescribes that the Executive Magistrate is required to record his subjective satisfaction either on the basis of police report or upon the other information that the dispute between the parties likely to cause the breach of peace was existing and only after recording such subjective satisfaction, the proceeding could be converted into Section 147 of the Cr.P.C., but that having not been done, the order dated 12.03.2004 and all the subsequent proceedings in the Court below are absolutely vitiated and cannot be sustained in the eyes of law.

5. Learned counsel for the private respondents, on the other hand, has submitted that even after the order dated 12.03.2004, both the parties appeared in the Court below and examined witnesses, and accordingly, on the basis of the evidence adduced by both the sides, the court below has passed the order directing the petitioners to remove the encroachment from the road in question. Learned counsel accordingly submitted that there is no illegality in the order dated 04.01.2006 passed by the learned S.D.M., Sadar, Ranchi in Case No. M-36 of 2004 or in the subsequent criminal revision filed by the petitioners, which was rejected by the revisional Court by order dated 03.02.2009 in Cr. Rev. 84 of 2006.

6. After having heard the learned counsels for both the parties and upon going through the record, I find force in submission of learned counsel for the petitioners

that the order dated 12.03.2004 passed by the court below converting the proceeding into Section 147 of the Cr.P.C. is absolutely non-speaking order, which has been passed without application of any judicial mind and in the absence of both the parties. The Magistrate has not at all recorded his subjective satisfaction about the existence of the dispute likely to cause the breach of peace and has converted the proceeding into one u/s 147 of the Cr.P.C. As such, the said order dated 12.03.2004 is absolutely illegal and cannot be sustained in the eyes of law. That being the position, all the subsequent proceedings in the court below including the order dated 04.01.2006 passed by the learned S.D.M., Sadar, Ranchi in Case No. M-36 of 2004 are absolutely vitiated and they also cannot be maintained.

7. In view of the aforementioned discussions, the order dated 12.03.2004 and all the subsequent proceedings thereafter, including the order dated 04.01.2006 passed by learned S.D.M., Sadar, Ranchi in Case No. M-36 of 2004 making the rule absolute against the petitioners are hereby set aside. Consequently, the order dated 03.02.2009 passed by the revisional Court below in Cr. Rev. No. 84 of 2006 is also, hereby, set aside.

8. It is made clear that if the dispute between the parties still exists, the Court below shall be free to initiate appropriate proceeding in accordance with law. This application is accordingly, allowed.