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Dinesh Prasad Sahu and Others Vs State of Jharkhand and Others

Criminal M.P. No. 585 of 2004

Court: Jharkhand High Court

Date of Decision: March 29, 2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 144, 144(4), 482

Citation: (2006) 2 JCR 403

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Advocate: Yadu Nandan Mishra, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

D.K. Sinha, J.
The petitioners have preferred this petition u/s 482, Cr PC for the quashing of 2nd and 3rd part of the order impugned

passed by the O.P. No. 2, S.D.M., Simdega on 13.4.2004 in a proceeding u/s 144, Cr PC in a case No. M-11/2004 whereby and where-under

it is alleged that though the proceeding was dropped against the petitioner initiated u/s 144, Cr PC in the first part of the impugned order but in the

2nd part it was directed to the Circle Officer, Kolebira as well as the Officer-in-Charge of Kolebira Police Station to ensure that no construction

be made on the said land. By the impugned order the Circle Officer was further directed that after assessment of the valuation of the land in

question as well as ascertaining the status of the land inform for further initiation of further proceeding u/s 144. Cr PC.

2. Learned counsel for the petitioner submitted that the provision u/s 144. Cr PC empowers a Magistrate to issue order in urgent cases of nuisance

or apprehended danger by directing the certain person or persons to abstain from a certain act or to take certain order with respect to certain

property in his possession or under his management. At the same time Section 144(4) provides that no order under this Section shall remain in

force for more than 2 months from the making thereof but in the present case it has been submitted that the learned S.D.M. though by the order

impugned dropped the proceeding u/s 144, Cr PC as against the petitioner-2nd parly at the end of the statutory period of two months but at the

same time the said Magistrate asked the Circle Officer for recommendation to initiate further proceeding u/s 144 Cr PC on the ground that the land

in question was Government land which is highly illegal uncalled for and liable to be set aside.

3. Reliance has been placed upon the decision reported in Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta

and Another, the Supreme Court of India in Acharya Jag-dishwarnand Avadhuta etc. v. Commissioner of Police, Calcutta and Anr. held that:

We agree that the nature of the order u/s 144 of the Code is intended to meet emergent situation. Thus the clear and definite view of this Court is

that an order u/s 144 of the Code is not intended to be either permanent or semi-permanent in character. The concensus of judicial opinion in the

High Courts of the country is thus in accord with the view expressed by this Court. It is not necessary on that ground to quash the impugned order

of March 1982 as by efflux of time it has already ceased to be effective.

But in the present case learned S.D.M. by the order impugned asked the Circle Inspector for fresh filing of the petition for further initiation of

proceeding u/s 144, Cr PC after the proceeding was seized to continue which is misuse of the process of the Court and it was nowhere mentioned

that there existed the breach of peace over the land. No document was produced by the 1st Party l.e. O.P. No. 3 Circle Officer, Kolebira

(Simdega) which was admitted on the ground that the 1st Party was otherwise busy in the election work and therefore the order impugned is not

sustainable for the aforesaid reasons and it is liable to be set aside.

4. Taking the considered view, as well as proposition of law as propounded by the Supreme Court of India on the relevant issue this Court finds

that the order impugned dated 13.4.2004 passed by the O.P. No. 2 in a proceeding u/s 144 Cr PC vide Case No. M-11/2004 is not sustainable

in the eye of law and hence it is set aside.

This petition is allowed.