

Abdul Mazid and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-19-2000

Judge : Deoki Nandan Prasad, J.

Appeal No. : Criminal Miscellaneous No. 4708 of 1997 (R)

Appellant : Abdul Mazid and ors.

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Mr. N.K. Sahani

Disposition : Application Dismissed

Prior history : Deoki Nandan Prasad, J. 1. This application under Section 482 of the Cr.P.C. has been filed on behalf of the petitioner for quashing the order dated 9.9.1997 passed by the learned Sub-Divisional Magistrate, Ramgarh in Misc. Case No. 4 of 1997 whereby and whereunder the proceeding initiated under Section 145, Cr.P.C. has been dropped. It is stated that the impugned order is vitiated in law, inasmuch as the land in question is wholly different as in the suit the plot No. 217 under Khata No. 47 w

Judgement :

Deoki Nandan Prasad, J.

1. This application under Section 482 of the Cr.P.C. has been filed on behalf of the petitioner for quashing the order dated 9.9.1997 passed by the learned Sub-Divisional Magistrate, Ramgarh in Misc. Case No. 4 of 1997 whereby and whereunder the proceeding initiated under Section 145, Cr.P.C. has been dropped. It is stated that the impugned order is vitiated in law, inasmuch as the land in question is wholly different as in the suit the plot No. 217 under Khata No. 47 whereas in the present proceeding, plot No. 216 under Khata No. 2 is involved and as such the judgment and decree passed in Title Suit No. 61 of 1986 are not applicable in the instant proceeding. It is also stated that there still exists apprehension of breach of peace between the parties with regard to the possession over the land in question and the proceeding should have been continued.

2. On the other hand, the show cause reply on behalf of the opposite parties filed in which it has been stated that there is no illegality in the impugned order as the learned Magistrate has rightly dropped the proceeding as per direction of the Hon'ble Court on the basis of judgment and decree passed in Title Suit No. 61 of 1986. It is also averred that the judgment and decree of plot No. 217 was considered and upheld all the documents of title and possession relating to plot No. 216 which is the subject-matter of the proceeding as from all the sides the land under plot No. 217 has been surrounded by the lands of plot No. 216. It is further stated that there is not apprehension of breach of peace at the spot as no any report from the police was received to indicate about the existence of apprehension of breach of peace and as such, the Court below has rightly dropped the proceeding under Section 145(5) of the Cr.P.C.

3. Heard Mr. A.K. Sahani, the learned Counsel appearing on behalf of the petitioners and Mr. N.N. Tiwary, the learned Counsel appearing on behalf of the Opposite parties.

4. Mr. N.K. Sahani, learned Counsel for the petitioners submitted that the learned Magistrate has committed error in dropping the proceeding without applying his judicial mind as he has not considered two things. First the Title Suit No. 61 of 1986 was decreed in connection with Plot No. 217 under Khata No. 47 which is

not the subject-matter of the proceeding under Section 145, Cr. P.C. as it is relating to plot No. 216 of Khata No. 2 and Secondly the learned Magistrate did not consider about existence of apprehension of breach of peace. It is further submitted that there was an specific direction by this Court in Cr. Misc. No. 1988 of 1997 (R) that the Sub-Divisional Magistrate will consider all the facts and other documents after hearing the parties and if Sub-Divisional Magistrate is satisfied about the title and possession of the petitioners and come to a conclusion that there is no apprehension of breach of peace, then he is competent to drop the proceeding. But the learned Court below failed to consider those points as there is existence of apprehension of breach of peace at the spot which itself proves that a petition to this effect was filed on behalf of the petitioners which has disposed of by order dated 3.7.1998.

5. It is further contended that the learned Magistrate dropped the proceeding after being satisfied as laid down under Section 145 (5) of the Cr. P.C. and there is no apprehension of breach of peace at the spot. It is further argued that the plot No. 216 has specifically been dealt with in the judgment of Title Suit No. 61 of 1986 and the opposite parties was found to be in possession and there is clearly mentioned in Schedule A of the Plaint that the land measuring an areas of 22 decimals, plot No. 217 under Khata No. 47 bounded within plot No. 216 and so plot No. 216 has already been dealt with in the judgment of the said Title Suit and as such, the, lower Court has rightly dropped the proceeding on the ground that the Civil Court has already passed decree in Title Suit No. 61 of 1986 and after relying on the decision reported in 1989 Cr.L.J. the Court below dropped the proceeding which does not required to be interfered.

6. It is apparent that the petitioner next had approached this Court through C.W.J.C. No. 4098 of 1996 (R) in respect of the land in question which was disposed of by holding that the Civil Court is appropriate forum where a parties can be ventilate their grievance. From going through the impugned order, it is also clear that there is no iota of evidence or document to show about existence of apprehension of breach of peace at the spot. Admittedly, Title Suit No. 61 of 1986 was decreed by the touching plot No. 216 also.

7. In the case of Narayan Mahto and Ors. v. Mahesh Prasad and Ors. reported in 1975 Cri. LJ page 1400 (patna) which has been held as under:

Where the proceedings under Section 145, Cr.P.C. have been dropped after hearing the parties, there is no provision in law for their restoration. It is, however, upon the Magistrate to initiate fresh proceedings, if he has material before him to be satisfied about their necessity.

7. In the instant case, the learned Magistrate passed the impugned order dropping the proceedings after hearing both the sides and he has considered all the materials placed before him and as such the impugned order does not require to be interfered. In view of the decisions, referred above, there is no scope for restoration of the second proceedings. However, it is upon the Magistrate to take fresh steps in accordance to law, if he finds and satisfies about existence of apprehension of breach of peace at the spot.

With the above observation, the application is dismissed.

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