

**Achinta Panda Vs. the State and ors.**

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**Court :** Kolkata

**Decided On :** Jun-26-1981

**Reported in :** 1981CriLJ1919

**Judge :** Amitabha Dutta, J.

**Appellant :** Achinta Panda

**Respondent :** The State and ors.

**Judgement :**

ORDER

**Amitabha Dutta, J.**

1. This revisional application is directed against the orders passed by Sri A. K. Chatterjee, the learned Sub-divisional Judicial Magistrate at Tamluk issuing process against the petitioner and Ors. who are the opposite party Nos. 3 to 23 under Sections 147 and 379 of the Penal Code in case No. P17C of 1979, arising out of a complaint filed by the opposite party No. 2 Saiful Islam. In the complaint filed on 22-11-79 the opposite party No. 2 alleged that on 16-11-1979 the petitioner and the opposite party Nos. 3 to 23 armed with various weapons trespassed into Plots Nos. 745 and 746 of Mouza Samsabad and forcibly reaped the paddy grown by the complainant as a bargadar of those plots.

2. The petitioner's case is that the opposite party No. 4 Mahadeb Panda and Ors. purchased the disputed land in Plot Nos, 745 and 746 of Monza Samsabad from Haripada Pal by a registered Kobala on 11-11-1978 and were in khas possession thereof since the said date. The opposite party No. 2 who was an intending purchaser threatened to cut away the paddy grown in the disputed land by the opposite party No. 4. So, the opposite party No. 4 made an application before the Sub-divisional Magistrate at Tamluk for drawing up proceedings under Section 144 of the Criminal P. C. against the opposite party Nos. 2 and Ors.. The learned Sub-divisional Judicial Magistrate after obtaining reports of the J. L. R. O. and the police of Nandigram P. S. and in consideration thereof passed an ex parte order on 15-11-1979 drawing up proceeding under Section 144 of the Code against the opposite party Nos. 2 and Ors. directing them not to enter upon the disputed land or disturb peaceful possession of the petitioner (opposite party No. 4 in the instant case) until further orders. The opposite party No. 4 and Ors. thereafter reaped the paddy from the disputed land on 16-11-1979 and intimated that fact to the learned Sub-divisional Judicial Magistrate. The petitioner's case is that the order of the learned Sub-divisional Judicial Magistrate issuing process under Sees. 147 and 379, I.P.C. against the petitioner and Ors. is not only vexatious but an abuse of the process of the court as they did not commit any offence whatsoever by reaping the paddy from the disputed land and that the learned Sub-divisional Judicial Magistrate acted illegally in issuing process against them.

3. It appears from the record of the Case No. 917C of 1979 pending in the Court of Sub-divisional Judicial Magistrate, Tamluk that the learned Magistrate after taking cognizance on the complaint of the opposite party No. 2 examined the complainant and one witness and thereafter, on being satisfied that there was sufficient ground for proceeding summoned the accused persons to answer a charge under Sections 147 and 379, I, P. C. The allegations made in the plaint taken on their face value constitute the offences alleged and are not patently absurd or inherently improbable. The evidence adduced before the learned Magistrate before the issuing of process is consistent with the accusation made in the complaint.

4. The point raised on behalf of the petitioner before this Court is that as the learned Executive Magistrate before passing the order under Section 144 of the Code found on the basis of the reports of the police and the J. L. R. O. that the petitioner was in possession of the disputed land the reaping of paddy from such land by the petitioner and his men did not constitute the offence alleged in the complaint and this Court should exercise its inherent jurisdiction to quash the proceedings in the criminal case after taking into account the reports of the police and the J. L. R. O. In this connection, reference has been made to the decision in the case of N. C. Nag Paul v. The State reported in (1979) 2 Cal HN 198 : 1979 Cri LJ 998 in which Manoj Kumar Mukherjee, J, has held that while exercising its inherent power for quashing a proceeding in which process has only been issued, this Court can look into and rely upon materials, besides those on which process was issued, which can be translated into admissible and relevant evidence, but it should not embark upon an enquiry in which an appreciation of the materials may be necessary to support or dislodge the accusation. The learned advocate appearing on behalf of the State has on the other hand contended that the learned Executive Magistrate in drawing up a proceeding under Section 144 of the Code had no jurisdiction to decide the question of title or possession of the suit land and that the reports of the police and the J. L. R. O. in so far as they deal with the question of title or possession in respect of the disputed land are not translatable into admissible and relevant evidence. In my view, the contention of the learned advocate appearing for the State is well founded and should be accepted. In my opinion, when the reports of public officers expressed opinion on private rights of parties, such opinions do not have any legal force. Their reports are not admissible in evidence' when they found facts requiring judicial determination in excess of their authority or their official duty. In a proceeding under Section 144 of the Code the learned Executive Magistrate had no jurisdiction to go into question of title or possession regarding the disputed land and the reports at] the J. L. R. O. and the police which deal with such question were made in excess of authority and so such reports are not acceptable in evidence. A report of inquiry which is ultra vires is inadmissible in evidence.

5. In the result, I find that there is no substance in the point raised on behalf of the petitioner and the petitioner cannot successfully invoke the inherent jurisdiction

of this Court to quash the proceeding in the criminal case in which process has been issued against the petitioner and the opposite party Nos. 3 to 23 under Sections 147 and 379, I.P.C. by the learned Sub-divisional Judicial Magistrate at Tamluk.

6. The petition, therefore, fails. The Rule is discharged.

7. Let the records be sent down as quickly as possible.

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