



Serial No. 07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Rev. P. No. 6 of 2022

Date of Order: 25.06.2024

Shri Minondro Areng
S/o.(L) M.M. Sangma
Vill. Thakuranbari, PO Monabari
PS. Ampati.

Vs. Talika T. Sangma
D/o. W.M. Marak,
Vill. Nirghini, PO. Betasing
PS. Ampati.

...Petitioner

... Respondent.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A.S. Siddiqui, Sr. Adv. with
Mr. D. Hynniewta, Adv.

For the Respondent(s) : Mr. P.R. Paske, Adv.

JUDGMENT (Oral)

1. By this Criminal Revision, the petitioner has challenged the impugned order dated 20.04.2022 passed in Misc. Case No. 01/2021 u/s 145 Cr.PC by which the disputed land was ordered to be attached u/s 146 (1) Cr.PC.

2. Heard Mr. A.S. Siddiqui, learned Sr. counsel appearing for the



petitioner and also Mr. P.R. Paske, learned counsel for the sole respondent.

3. The facts as can be revealed from the materials on record is that the respondent herein filed an FIR dated 05.02.2021 before the Officer In-charge, Ampati Police Station alleging that the petitioner was attempting to forcibly occupy her land situated at Ichakuri, Ampati, South West Garo Hills District. Pursuant to the lodging of the FIR, the police conducted an investigation in the matter and thereafter, forwarded a report to the learned Executive Magistrate, South West Garo Hills District for initiation of proceeding under Section 145 Cr.PC involving both the petitioner and the respondent herein. The learned Executive Magistrate, consequent upon receiving the police report drew up a proceeding under Section 145 Cr.PC in Misc. Case No. 01/2021. It appears that pursuant to the initiation of the proceeding and filing of the written statement by the respective parties, the learned Executive Magistrate vide impugned order dated 20.04.2022 passed an order directing the attachment of the land in question under Section 146(1) Cr.PC and prohibited the parties from engaging in any economic activities on the land during the period of attachment or until such time when process and demarcation is completed by the concerned officials of the Garo Hills Autonomous District Council, (GHADC).

4. Assailing the impugned order dated 20.04.2022, the learned Sr. counsel for the petitioner submits that the learned Executive Magistrate had not followed the provisions of law as laid down under Section 145 and Section 146(1) Cr.PC and passed the impugned order without even recording that there exists a likelihood of breach of peace between the



parties over the possession of the land in question. He submits that in absence of compliance of the mandatory provisions of law, the impugned order cannot be sustained and liable to be set aside and quashed.

5. Mr. P.R. Paske, learned counsel for the respondent submits that the proceeding u/s 145 Cr.PC was initiated by the Executive Magistrate on the basis of the report of apprehension of breach of peace between the parties herein concerning landed property filed by the police. He further submits that the order of attachment was necessitated because of the existing situation and passing of the earlier order dated 21.02.2020 concerning boundary dispute between the parties by the revenue authority of the GHADC. He submits that taking into consideration the factual background, the impugned order does not suffer from any illegality and this instant criminal revision petition deserves to be dismissed.

6. Upon consideration of the submission made by the rival parties and on perusal of the materials on record, it is found that the learned Executive Magistrate while passing the impugned order did not record anything with regard to the existence of any situation concerning breach of peace between the parties over possession of land in question. Further, the learned Executive Magistrate before passing the order of attachment under Section 146(1) Cr.PC has also not recorded any finding basing on existing factual situation to ascertain as to which party was in possession of the disputed land at the relevant point of time. The perusal of the impugned order shows that the learned Executive Magistrate has given much weightage to the production of documentary evidence in relation to the claim of ownership of the parties instead of determining the question of possession over the disputed land. The operative part of the impugned



order reads as follows: -

“..... Since both the parties have been unable to prove the extent of boundaries of their lands from land documents produced by them or through witnesses. I am unable to satisfy myself as to which of the parties are in actual possession of part or portion of subject land(s) covered by PP No.4, Dag. No.4, area measuring 5B-1K-10L and PP No. 305, Dag No.150, area measuring 73B-0K-17L, on the date of filing of petition. Hence I find it to be a fit case to draw proceedings under section 146 Cr.PC and attach the subjectland(s) until demarcation of boundaries in compliance of Judgment and Order dated 21.02.2020.....”

It is evident from the above that the learned Executive Magistrate was looking for documentary proof to determine merits of the claims of the parties to the right of possession instead of looking for direct evidence as to who was in possession at that relevant point of time. Section 145 (4) Cr.PC mandates that the question of possession has to be decided without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute. It is thus clear that in a proceeding u/s 145 Cr.PC the dispute with regard to possession has to be decided on the basis of the statements put in, evidence recorded and hearing the parties and not basing on any documentary proof of ownership.

7. There must be existence of situation as contemplated under Section 145(1) Cr.PC before any valid order of attachment under Section 146 (1) Cr.PC can be made. It follows that there must be existence of situation over possession of disputed land which may cause breach of peace between the parties prior to any order of attachment of disputed property is made. If there is no direct evidence of any likelihood of breach of peace, the inability of the Magistrate concerned to come to a finding as to which party is in possession of the disputed land, cannot be sole ground



for passing of order of attachment. In the instant case, even though the learned Executive Magistrate in the impugned order dated 20.04.2022 has recorded his inability to come to a conclusion as to which party is in actual possession, the order is silent as to the question of likelihood of breach of peace. There is no finding that the continuation of the existing situation between the parties would result in creation of breach of peace between the parties. In such a situation, the impugned order cannot be sustained.

8. Needless to say, that if any party makes claim of possession over disputed land basing on documentary evidence, it will be open for that party to approach a civil court of competent jurisdiction for passing of appropriate order.

9. In view of the above, the impugned order dated 20.04.2022 passed in Misc. Case No. 01/2021 under Section 145 Cr.PC is set aside and quashed.

10. This Criminal Revision Petition stands allowed.

Judge

Meghalaya
25.06.2024
"N.Swer, Stenographer, Gr-II"

NATHANIEL
SWER

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