

IN THE COURT OF SESSIONS JUDGE, KAMRUP, GUWAHATI

Present :- Dr. (Mrs) I. Shah

Criminal Revision No. 86 of 2010

1. Md. Abdul Rahman
S/o Late Taslim Ali
R/o Athgaon
P.S.- Bharalumukh
Dist.- Kamrup(M), Assam
2. Sri Binod Sahu
R/o Kumarpara
P.S.- Bharalumukh
Dist.- Kamrup(M), Assam

Petitioners

-Vs-

1. Sri Bijay Jagoti
S/o Sita Ram Jagoti
R/o B-302 Golden Right Apartment,
Chatribari Road
P.S.- Paltanbazar
Dist.- Kamrup(M), (Assam)
2. State of Assam

Opposite Party

Advocates

- | | | |
|----------------------------------|---|--------------------------------------|
| 1. For the Petitioners | : | Syed Ikram Rasul
Mr. Samsul Hoque |
| 2. For the Opposite Party | : | J. Payeng
M. Basumatary |
| 1. Date of Argument | : | 19-08-2011 |
| 2. Date of Judgment | : | 03-09-2011 |

J U D G M E N T

This revision is preferred against the order dated 20-09-2010 passed by the learned Executive Magistrate Kamrup, Guwahati, drawing the proceeding U/S 145 of Cr.P.C. and attaching the disputed premises U/S 146 of Cr.P.C. vide order passed in Misc. Case No. 194 of 2010. Before appreciated the rival contention of the parties brief facts need to be noticed which are as follows :

The O.P. No.1 herein namely Bijay Jagati filed an application on 08-09-2010 before the SDO (S), Kamrup (Metro) wherein he stated that he is a tenant in respect of a room in the RCC building of the petitioner. On 03-09-2010, he learnt that the petitioner is going to let out the said room to another person who is occupying the same and there by tried to disposes the petitioner from the premises. Learned SDJM, forwarded the petition to Bharalumukh P.S. for enquiry and report. Eventually S.I. Bharalumukh submitted the report stating that there was an agreement between the parties and as per said agreement the petitioner let out a room the O/P and took an amount of Rs. 4,00,000/- as advance for construction of the room. Police also reported that on the basis of the FIR lodged by the O/P/1st party the police registered a case against the 2nd party/petitioner U/SS 420/406 of I.P.C. Police submitted that a proceeding U/S 107 of Cr.P.C. may be drawn up and the disputed room may be attached. The learned Executive Magistrate vide the impugned order drew up a proceeding U/S 145 of Cr.P.C. and attached the disputed premises U/S 146 Cr.P.C. She also impleaded Sri Binod Shahu a tenant of petitioner, as 2nd party No.2.

Aggrieved the order the petitioner has challenged the order in this petition. The grievance of the petitioner is raised in this petition are that the dispute between the parties is purely civil in nature. There was no apprehension in breach of peace and tranquility in the area. Moreover, the direction of the court to attach the room is also bad in law. In the schedule of the room there is no mention of boundaries. Admittedly, the O/P had no possession over the disputed premises.

The assumption of jurisdiction by an Executive Magistrate for initiating proceeding for the Section 145 (1) of Cr.P.C. raise on satisfaction about the existence of the dispute giving right to apprehension of breach of peace on the spot in respect of land in dispute where the Executive Magistrate drew up the proceeding U/S 145 of Cr.P.C. without be satisfied about the existence of the dispute likely to cause breach of peace and failure to serve the proper notice as per requirement of Sub-Section 3 and jumps to the passing of an order of attachment in fact being without jurisdiction and the irregularity incurable.

Here in this case the O.P/Petitioner in his petition has averred that he is a tenant in respect of the room. There was an agreement between him and the land lord i.e. petitioner herein. In pursuance of the agreement, the O/P who is 1st party in the aforesaid proceeding paid an amount of Rs.4,00,000/- to the petitioner as advance money and the petitioner claimed that the possession of the said room was handed over to him and he already started work of furniture in the said room. It is alleged that on 03-09-2010, when he went to disputed premises for doing his furniture work he came to know that the 2nd

party has entered into an agreement with some other persons with intention to let out the room to some other persons and the said persons is also looking for construction of the furniture work in the said premises. It is also averred that immediately the petitioner tried to contact the 2nd party but he could not contact him as he is trying to avoid the petitioner. He alleged that the petitioner/opposite party is a man of criminal nature and cheated him which may result in serious breach of peace at the locality. Here from the above mentioned in the petition there is nothing to come to the conclusion that there was an eminent danger or apprehension of breach of peace in the locality.

The learned Magistrate before formulating the preliminary order and before giving any notice to the petitioner passed the composite order jumping out the provisions of 145 of Cr.P.C.

In the reported case of Darsan Lal-Vs- Sayan Das and others 2002 CLR 3214 Jammu & Kashmir it is held that the object of preliminary order is to give on persons concerned in the dispute noticed that the magistrate is taking action U/S 145(3) of Cr.P.C. provided opportunities to prove their possessions so as to enable him to decide as to which of the party he is in possession in the date of institution of proceedings. In other words passing of preliminary order is mandatory, its foundations for exercising of jurisdiction by Executive Magistrate. It is a settled proposition of law that order of attachment of property in dispute must be proceeded by a valid preliminary order U/S 145(1) of Cr.P.C. it means the preliminary order must be in accordance with law. Herein

this case without holding any inquiry the learned Magistrate attached the disputed premises whereas the petition filed by the O/P does not disclose that there was any eminent danger or likelihood of breach of peace in the locality or the case was emergent in nature. Considering all the order passed by the learned Magistrate is set aside. The case is remanded back to the learned Court to dispose of the petition filed by the O/P as per the procedure let down U/S 145(1) of Cr.P.C. Send down the case record along with a copy of judgment and order.

Given under my hand and seal of this court on this 3rd day of September, 2011.

Sessions Judge
Kamrup, Guwahati

Dictated & Corrected by me

Sessions Judge
Kamrup, Guwahati