

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE :
SONITPUR AT TEZPUR**

PRESENT : Smt. M.R. Sharma
Additional Sessions Judge
Sonitpur, Tezpur

CRIMINAL REVISION NO. 72 (S-4) OF 2012

[Revision petition filed u/s 397 / 399 Cr.P.C. against the order dated 02-11-2012 passed by Sri H.K. Borah, learned Additional District Magistrate, Sonitpur, Tezpur, in connection with Misc. Case No. 12 / 107 / 145 / 146 / 2012]

1. Sri Dulal Medhi
2. Sri Nayan Kumar **Petitioners**

-VERSUS-

1. Sri Dimu Patangia
2. The State of Assam **Opp. Parties.**

ADVOCATES WHO APPEARED IN THIS CASE

For the petitioners : Sri S. Nath,
Advocate

Sri S.K. Nath,
Advocate

For the Opposite Party : Smt. D. Bose
Advocate.

Date of Argument : 27-01-2014, 12-03-2014
22-04-2014

Date of Judgment : **19-05-2014**

19/5/14
Additional Sessions Judge
Sonitpur, Tezpur

J U D G M E N T

This Criminal Revision has been filed Under Section 397 / 399, Cr.P.C. against the order dated 02-11-2012 passed by Sri H.K. Borah, learned Additional District Magistrate, Sonitpur, Tezpur, in connection with Misc. Case No. 12 / 107 / 145 / 146 / 2012.

2. The case of the revision petitioner is that the present opposite party No. 1 instituted a case being Misc. Case No. 12 / 107 / 145 / 146 / 2012 against the present petitioner (opposite party in the original case) alleging that the opposite party, i.e. the revision petitioner entered in the disputed land illegally and constructed a dwelling house and also tried to assault the present opposite party by using unparliamentary languages.

3. Upon receiving the said application the learned Additional District Magistrate, Sonitpur, Tezpur called for the Police Report after making enquiry. Thereafter the learned Magistrate had gone through the Police Report, drawn up a proceeding u/s 145 Cr.P.C. and attached the disputed land except the dwelling house u/s 146 (1) of the Cr.P.C. vide Order dated 02-11-2012, and the Magistrate also passed an prohibitory order against both the parties entering into the disputed land.

4. Being highly aggrieved and dissatisfied with the aforesaid order dated 02-11-2012, passed by the learned Additional District Magistrate, Sonitpur, Tezpur, the present petitioners have preferred this criminal revision before this Court mainly on the following grounds :-

That the impugned order dated 02-11-2012 is bad in law and same is liable to be set aside;

that the learned Additional District Magistrate, Sonitpur, Tezpur passed the impugned order without giving any chance to the petitioner-O.P. No. 1 and 2 to defence themselves and without hearing of the petitioner-O.P. No. 1 and 2;

that the learned trial Court has failed to consider the basic principle of law;

that the impugned order of the learned Additional District Magistrate, is not sustainable in law and, hence the same has to be set aside;

Under the above facts and circumstances, the Revision Petitioner has prayed for setting aside the impugned order dated 02-11-2012, passed by the learned Additional District Magistrate, Sonitpur, Tezpur.

5. I have heard the argument advanced by the learned counsel Sri S. Nath, appearing for the revision petitioners and Sri D. Bose, appearing for the opposite party. I have perused the lower Court records and also all other materials.

6. On perusal of the lower Court records, I find that the proceeding u/s 145 / 146 of the Cr.P.C. was drawn up by the learned Additional District Magistrate, Sonitpur, Tezpur, on 02-11-2012 on the disputed land, after receipt of the police report and after being satisfied that there may be a serious breach of peace between the

parties. The O.P.-petitioner Sri Dimu Patangia had filed a petition before the learned Additional District Magistrate, Sonitpur, Tezpur, stating that on 10-09-2012 without his knowledge, the Revision Petitioner-O.P., namely Sri Dulal Medhi and Sri Nayan Kumar had trespassed into the disputed land and started construction of a house and coming to know of that fact he had prayed by the said petition to take necessary action. Accordingly, the learned trial Court had directed the police to file a report as per procedure provided u/s 145 Cr.P.C.

7. I have gone through the police report and it is seen that in the police report it has been stated that the disputed land was purchased by Sri Dimu Patangia, Petitioner-O.P., from one Keshab Kumar along with a tin roofed house. The police report also shows that the petitioner-O.P. had given the said house on rent and one Nayan Kumar was residing in the said rented house. It is also seen from the report that the other Revision Petitioner-O.P. Sri Duslal Medhi had attempted to construct a house and for that, there was a disturbance and altercation between both the parties and so, the report was that there was apprehension of breach of peace on the said disputed land. On the said police report, the learned Additional District Magistrate had on 02-11-2012 passed the order of drawing up a proceeding u/s 145 Cr.P.C. and due to emergency had attached the disputed land except the dwelling house u/s 146 (1) Cr.P.C. prohibiting both the parties from entering into the disputed land until further orders.

8. The Revision Petitioner had come against the said order on the ground that the learned Additional District Magistrate, Sonitpur, Tezpur, had passed the order

without giving any chance to the petitioner-O.P. and without hearing them and so, the trial Court had failed to consider the basic principles of law. So, they have prayed for setting aside the said order.

9. Section 145 Cr.P.C. relates to the procedure where dispute concerning land or water is likely to cause breach of peace and Sub-Section (2) of Section 145 Cr.P.C. defines that land or water includes building, market, fisheries etc. including rent or profit from any such property. It is provided in Section 146 that if the Magistrate is satisfied after making an enquiry and considers the case to be one of emergency, then the Magistrate can draw up a proceeding u/s 146 Cr.P.C. and he may attach the subject matter of dispute until the competent Court has determined the rights of the parties. In the instant case, I find that the learned Additional District Magistrate, Sonitpur, Tezpur, had not committed any irregularity or illegality in attaching the disputed land considering the police report and also considering the emergency of there being breach of peace between both the parties. The learned trial Court had not failed to consider the basic principles of law and since the police report shows that the O.P. - petitioner had purchased the land and the Revision Petitioners have forcibly entered and tried to construct houses thereon, there is every possibility of breach of peace. I find no illegality or impropriety in the said order, dated 02-11-2012, passed by the learned Additional District Magistrate, Sonitpur, Tezpur, in Misc. Case No. 12 / 107 / 145 / 146 / 2012, and I find no ground to interfere with the said order and also no reason to set aside the same.

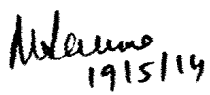
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 10.15.14

10. Accordingly, the Revision Petition is **dismissed** and the parties will appear before the learned trial Court.

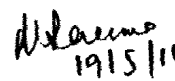
The Revision petition is disposed of on contest accordingly.

Return the lower court record along with a copy of judgment of this Court.

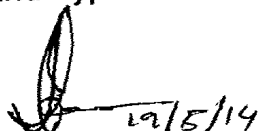
Given under my hand and seal of this Court on this **19th day of May, 2014.**


19/5/14
(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Dictated and corrected by me
and every page bears my signature.


19/5/14
(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Transcribed and Typed on dictation by me –


19/5/14
(I. Goswami)
Stenographer