

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

**PRESENT : Sri A. Borthakur
Sessions Judge
Sonitpur, Tezpur**

CRIMINAL REVISION NO. 39 (S-3) OF 2012

(Revision against the order dated 18-06-2012 passed by learned Executive Magistrate, Tezpur, Sonitpur in connection with Misc. Case No. 13/145/146/2012 u/s 145/146 CrPC)

1. Md. Umar Ali

Son of Md. Alimuddin
Resident of Sirajuli Pathar
Mouza - Borsola
PS – Dhekiajuli
Dist – Sonitpur, Assam

.... **OP / Petitioner**

VERSUS

1. Md. Jange Naushad Ali

Son of Late Rustam Ali
Resident of No.1, Sirajuli Pathar
Mouza - Borsola
PS – Dhekiajuli
Dist – Sonitpur, Assam

9. State of Assam

Represented by Public Prosecutor
Tezpur, District – Sonitpur, Assam

... **Petitioners / OP**

ADVOCATES WHO APPEARED IN THIS CASE

**For the petitioners : Sri S. Borthakur
Advocate**

**For the Opposite Partie : Sri B. Katakya
Advocate**

Date of Argument : 19-01-2013

Date of Judgment : 29-01-2013

J U D G M E N T

This is a criminal revision preferred u/s 397/399 CrPC against the order, dated 18-06-2012, passed, in Misc. Case No. 13/145/146/2012 u/s 145/146 CrPC, by the Executive Magistrate, Tezpur, Sonitpur.

The facts, in brief, giving rise to the instant criminal revision petition, may be stated, as follows :

The 1st party-OP, herein, filed an application before the Executive Magistrate, Tezpur u/s 145/146 CrPC alleging that he purchased the disputed land on 20-02-1990 and has been possessing the land by paying land revenue, but the 2nd party-revision petitioner, herein, tried to disposes the 1st party-OP, herein, from the aforesaid disputed land and when the 2nd party-revision petitioner, tried to prevent the aforesaid illegal act, the 2nd party-revision petitioner threatened with dire consequences, which led to apprehension of breach of peace in the locality and accordingly, after due enquiry, the report was submitted whereupon, on consideration, the learned Executive Magistrate, Tezpur passed the impugned order, dated 18-06-2012 drawing up the proceeding u/s 145/146 CrPC.

Now, the 2nd party-revision petitioner has assailed the above order, dated 18-06-2012, passed, in Misc. Case No. 13/145/146/2012, inter-alia, on the following grounds :

- (a) that the learned Executive Magistrate, Tezpur ought not to draw up the proceeding as the dispute is purely civil in nature and the criminal court has no jurisdiction to draw up the proceeding against the 2nd party-revision petitioner, herein ;
- (b) that the learned Executive Magistrate while passing the order has not stated anything about the disputed land ;
- (c) that the dispute is a private dispute ; and
- (d) that by the impugned order, no opportunity has been granted to the OPs to file the written statement, if any.

Hence, it is prayed to set aside the impugned order, dated 18-06-2012.

I have heard the learned counsel of both the sides. Perused the materials in the connected record of Misc. Case No. 13/145/146/2012 u/s 145/146 CrPC and the instant case record.

POINT FOR DETERMINATION :

Now, the point to be decided in the instant proceeding is whether the impugned order, dated 18-06-2012, passed by the learned Executive Magistrate is liable to be set aside ?

THE DECISION AND THE REASONS THEREFOR :

SECTIONS 145(1)/146(1)CrPC

It may further be mentioned that the Executive Magistrate, before invoking Section 145 (1) CrPC, (i) it must be satisfied as to existence of a dispute likely to cause a breach of peace concerning land or water ; (ii) pass an order in writing; (iii) the order must state the ground of being satisfied ; (iv) the order must require the parties to attend the Court on a specified date and time and put in written statement as to **actual possession** of the subject matter of the dispute ; and (v) the subject matter of the dispute has to be described in the order. Possession referred to in section 145 CrPC is actual and exclusive possession of the subject matter. After issuing preliminary order and after serving copy of the order, passed under Section 145(1) CrPC, the Magistrate is required to receive all such evidence as may be produced by the parties and take such other evidence, if any, as he may think necessary. On the other hand, as per section 146 CrPC, the Magistrate, in a proceeding u/s 145 CrPC, may issue interim order of attachment at any time after passing an order u/s 145(1) CrPC, when it appears to him (i) to be a case of emergency ; (ii) if he decides that none of the parties was in actual possession or (iii) if he is unable to satisfy himself as to which of them was then in possession of the subject matter of dispute.

IMPUGNED ORDER :

The impugned order, dated 18-06-2012, passed, in Misc. Case No. 13/145/146/2012, reads as under :

“18/06/2012

Received the case on transfer under 145 CrPC. Seen the police report. Heard the learned advocate for the 1st party. It is seen from the police report and from the learned advocate of 1st party that there is every possibility of breach of public peace & tranquility between 1st party and 2nd party. Hence, I am satisfied to continue the proceeding under 145 CrPC and attach the land as per D/L given below under 146 CrPC.

DL.

O.C Dhekiajuli PS is directed to follow the attachment order and report compliance. Next date for appearance of both parties – 25/07-2012.”

SATISFACTION – AN ANALYSIS :

On reading of the above impugned order, it appears that the same was passed on the basis of satisfaction derived from the police report and hearing the submission of the learned counsel appearing on behalf of the 1st party – OP, herein. The learned trial Executive Magistrate was further satisfied that due to the dispute between the parties over the land, there was apprehension of breach of public peace and tranquility in the locality and as such, resolved to draw up the proceeding u/s 145 CrPC and to attach the disputed land u/s 146 CrPC.

PROPRIETY OF IMPUGNED ORDER :

On perusal of the above impugned order, it appears that the learned Executive Magistrate, before invoking Section 145 (1) CrPC, was satisfied as to existence of a dispute likely to cause a breach of peace concerning the disputed land, on the basis of the police report and hearing the 1st party- OP, herein. The learned Magistrate has noted that there is apprehension of breach of peace arising out of the dispute over the possession of the disputed land between both the parties to the proceeding. In the interest of justice, to both the parties, this Court has looked into the contents of the police report in question and, inter-alia, finds that the cause of dispute between the parties is rooted in over forcible raising of a house on the disputed land and possession over the said plot of land, which has given rise to apprehension of breach of peace in future between the parties. Therefore, strictly speaking, the dispute between the parties does not relate to actual possession of the disputed land only and the foundation of satisfaction of the learned Court as to existence of threat to public peace and tranquility has not been indicated in the police report. Further, the impugned order does not specify the disputed land in question with full particulars, such as, Nos. of Patta and Dag and four boundaries thereof and no opportunity has been extended to the 2nd party-revision petitioner to file written statement, if any, against the said order.

Situated thus, it is seen that the impugned order has been passed without properly adhering to the prescribed procedure laid in Section 145(1) and 146(1) CrPC, as discussed above.

FINDING

For the reasons, set forth above, the impugned order, dated 18-06-2012, passed, in Misc. Case No.13/145/146/2012 is set aside, being passed not in accordance with law.

Accordingly, the revision is allowed.

Send back the LCR along with a copy of this judgment.

This Criminal Revision No. 39 (S-3) 2012 is disposed of accordingly.

Given under my Hand and Seal of this Court on this 20th day of December, 2012

**(A. BORTHAKUR)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Typed to my dictation and corrected by me, and each page bears my signature:

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Typed by me,
on dictation :

(J.K. Muru, Steno)

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