

HEADING OF JUDGMENT IN CRIMINAL REVISION

District:-Dhubri, Sub Division-Bilasipara.

IN THE COURT OF ADDL. SESSIONS JUDGE BILASIPARA.

Present:-**Smti S. Bhuyan.**

Addl. Sessions Judge, Bilasipara.

(Criminal Revision Case No. 16/17 & Criminal Revision Case No. 14/17)

**Revision against the order dated 24-04-17 and 16-05-17 passed by Ld.
SDM, Bilasipara in Misc. case no. 108/16 u/s 146(1) Cr.P.C**

Sri Mohidul Islam,

Secretary of LMV & Auto Stand Management Committee,

Nayahat, P.O- Barkanda

P.S- Bilasipara.

Dist- Dhubri, Assam.

..... Revisionist/Petitioner

-Versus-

Sri Bodial Ahmed,

Secretary, Nayahat Barkanda Auto Magic,

Four wheelers Vehicle Malik Association

Nayahat, P.O.- Barkanda

P.S- Bilasipara.

Dist- Dhubri, Assam.

.... Respondent/Opp. Party

Advocates appeared:-

For the petitioner:- Mr. A.M. Sarkar , Advocate.

For the opp. party:- Mr. T. Hoque , Advocate.

Date of argument:- 15-11-17, 28-11-17

Date of judgment:- 12-12-17

JUDGMENT

1. By this common judgment I am going to disposed of the amalgamated C.R. Case No. 14/17 and C.R. Case No. 16/17 as both the criminal revision petitions are filed by same petitioner Sri Mohidul Islam, Secretary of LMV & Auto Stand Management Committee, against same opp. Party Sri Bodial Ahmed, Secretary, Nayahat Barkanda Auto Magic, Four wheelers Vehicle Malik Association against the order dated 24-04-17 and 16-05-17 passed by Ld. SDM, Bilasipara in Misc case no. 108/16 u/s 146(1) Cr.P.C.

2. According to the petitioner order dated 24-04-17 and 16-05-17 passed by Ld. SDM, Bilasipara in Misc case no. 108/16 u/s 146(1) Cr.P.C is unjust, improper and illegal. Ld. court below had passed the impugned order dated 24-04-17 without serving any notice to revisionist petitioner and passed the order dated 16-05-17 beyond his jurisdiction. Petitioner stated there is no cause of action in Misc. Case no. 108/16 and therefore proceeding u/s 145/146 of Cr.P.C is not maintainable. Petitioner stated a civil suit vide T.S Case no. 28/16 has been instituted regarding the same subject matter and same dispute and therefore initiation of parallel proceeding u/s 145 Cr.P.C is not permissible and impugned order dated 24-04-17 and 16-05-17 is illegal and without force of law. Petitioner further stated in Misc. Case No. 108/16 disputed land is jointly possessed by Samsul Huda and Most. Sopia Bibi and the respondent being not a land lord has no authority to initiate Misc. Case No. 108/16 and therefore Ld. court below has no jurisdiction to initiate said case and ld. court below erred both in law and fact in passing the impugned order dated 24-04-17 and 16-05-17. The petitioner being highly aggrieved and dissatisfied with the impugned order dated 24-04-17 and 16-05-17 passed by the Ld. SDM, Bilasipara in Misc case no. 108/16 u/s 146(1) Cr.P.C, move this court by filing revision petition vide C.R Case No. 14/17 and C.R. Case No. 16/17u/s 397/399 of the Cr.P.C. challenging impugned order dated 24-04-17 and 16-05-17 passed by the Ld. SDM, Bilasipara in Misc case no. 108/16 u/s 146(1) Cr.P.C

3. In course of hearing, the record of trial court pertaining Misc case no. 108/16 u/s 146(1) Cr.P.C. is called for. I have gone through the record of the trial court along with present Revision Petition and impugned order dated 24-04-17 and 16-05-17 passed by the Ld. SDM, Bilasipara in Misc case no. 108/16 u/s 146(1) Cr.P.C. and record of trial court.

4. The fact leading to the filing of this Revision Petition is enumerated below:–

5. The opp. party Sri Bodial Ahmed, Secretary, Nayahat Barkanda Auto Magic, Four wheelers Vehicle Malik Association (1st party in Misc. Case no. 108/16) moved a petition before SDM, Bilasipara citing that Revisionist petitioner & Ors. (opp. Party in Misc. Case no. 108/16) falsely claiming themselves as members of LMV & Auto Stand Management Committee, Nayahat without any valid ground illegally trying to interfere in the regular function of the Association and creating disturbances in the matter of collecting the parking charges from the drivers of the vehicles of parking place of the Opp. Party (1st party in Misc. Case no. 108/16) i.e at Barkanda, P.O. Barkanda, PS- Bilasipara , Dist- Dhubri vide registration number RS/DBR/250/Q/401 of 2013-14 and Revisionist petitioner & Ors. (opp. Party in Misc. Case no. 108/16) trying to commit breach of peace. Therefore opp. party Sri Bodial Ahmed, Secretary, Nayahat Barkanda Auto Magic, Four wheelers Vehicle Malik Association (1st party in Misc. Case no. 108/16) prays for drawn up proceeding u/s 107 Cr.P.C in the said parking place and to direct revisionist petitioner Sri Bodial Ahmed & Ors. (opp. Party in Misc. Case no. 108/16) to execute bond for keeping and maintaining peace and public tranquility at least for a period of one year.

6. Ld. counsel for both sides submitted written argument. Ld. Counsel for revisionist petitioner in his written argument cited that Ld. Executive Magistrate has failed to understand the theory of fair justice and provision of section 145 and 146 Cr.P.C and has committed irregularities at the time of passing of impugned order. He further cited that there was no apprehension of breach of peace with respect to the possession of land in question and police made false report in collusion with Opp. Party though there was no apprehension of breach of peace. Ld. Counsel for the Opp. Party in his written argument cited that revisionist petitioner and his vested interested persons with an oblique motive tried to commit very serious breach of peace to Opp. party and members of his association tried to commit serious breach of peace and therefore opp. Party on 06-12-16 was compelled to file a petition u/s 107 Cr.P.C before Ld. SDM, Bilasipara. He further cited that the attachment order was rightly passed by the Ld. SDM, Bilasipara to prevent breach of public peace and tranquility and there is

no any illegality, mis-carriage of justice in the impugned order passed by Ld. SDM, Bilasipara.

7. The point for determination in this Revision Petition is: -

i) Whether Ld. Trial court erred in law in passing the impugned order dated 24-04-17 and 16-05-17 in Misc case no. 108/16 u/s 146(1) Cr.P.C?

8. To arrive at the just decision for the aforesaid point for determination, I have gone through the impugned order dated 24-04-17 and 16-05-17 passed by Ld. SDM, Bilasipara in Misc. case no. 108/16 u/s 146(1) Cr.P.C and material present in the trial court record and also taken into consideration the written argument submitted before me by the Ld. counsel for both sides.

9. Vide order dated 24-04-17 and 16-05-17 Ld. Executive Magistrate attached the disputed land prohibiting both sides to park any public Auto Rickshaw/Tempo/ Magic/ and any other four wheeler vehicles in the disputed land. Schedule of the disputed land are **A schedule-** Rev. Circle Bilasipara, Rev. village- Fakiranirjhar Pt. II, Dag No. 513, Patta No. 291 land measuring 2K-10L bounded by North- Rosmina Khatun, South- Ruhul Amin, West- Sapatgram PWD road, East- Samsul Huda and **B schedule-** Rev. Circle- Bilasipara, Rev. Vill- Fakiranirjhar Pt II, Dag No. 445(old), 453(New), Patta No. 346, Land measuring- Auto stand, bounded by North- Alhaj Gaji Rahman & Ors, South- Abdul Mozid Sk, West- Sohidor Rahman, East- Siraj Hazi and Sapatgram PWD road.

10. It is seen that before Id. trial court, present petitioner took plea that one Sofia Bibi is the owner of the disputed land. The plea of the revisionist petitioner made it absolutely clear that revisionist petitioner and his association is not true owner of the land. Disputed land is measuring 3K-10L covered by dag no. 454/293, 446/592/453/366, 458/403, 168/546 of PP no. 99, 346, 61 situated at Fakiranirjhar Pt II, Revenue circle- Bilasipara , Dhubri but it is evident from trial court record that both sides claimed that original owner of the land made rent agreement with them and gave lease of the disputed land in their favour. Neither of them submitted original deed of lease against before the trial court. Lease dated 01-08-14 was made in between Sapia Bibi and Nayahat Barkanda Auto Magic and four wheeler vehicle Malik Association is for 3 years and lease agreement dated 23-02-16 was made between Smti Safia Bibi W/O Gaji Barman and Sri Mohidul Islam, Secretary LMV & Auto Stand Management Committee Nayahat, Barkanda. 1st lease agreement dated 01-08-14 is for 3 years, that

means it is continued up to 01-08-14 to 31-04-15; 01-08-15 to 31-07-16; 01-08-16 to 31-08-17 and 2nd lease agreement dated 23-02-16 was made by same land lady with present petitioner prior to end of 1st lease agreement. There is no cancellation, revocation of lease agreement dated 01-08-14 was produced by the lessor or present revisionist petitioner either before Ld. trial court or before this revisional court. All these facts shown that both parties claim their possession in the disputed land based on lease agreement dated 01-08-14 and 23-02-16 respectively and there appeared apprehension of breach of peace and tranquility and Ld. trial court rightly attached the disputed land prohibiting both sides from entering into disputed land and I do not find any error, illegality in the order dated 24-04-17 and 16-05-17 passed by Ld. trial court. Accordingly impugned order dated 24-04-17 and 16-05-17 passed by Ld. SDM Misc case no. 108/16 u/s 146(1) Cr.P.C is hereby upheld and this revision petition has no merit and therefore this revision petition is dismissed.

11. Send down the LCR with a copy of this court judgment to the learned trial court immediately.
12. Judgment delivered under hand and seal of this court on this 12th day of December, 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge Bilasipara

Dictated & corrected by me.

(S. Bhuyan)

Addl. Session Judge, Bilasipara,

Typed by,

Swmkhwr Brahma, Stenographer Gr. III