

GAHC040003522023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Petn. 40/2023

1: Winthan Mossang and 2 Ors.
Son of Late Somkhum Mossang,
Khagam Mossang Village, PO and PS Miao, District Changlang, Arunachal Pradesh.

2: Thankam Mossang
Son of Late Somkhum Mossang

Khagam Mossang Village
PO and PS Miao
District Changlang
Arunachal Pradesh.

3: Ongnong Mossang
Son of Late Somkhum Mossang

Khagam Mossang Village
PO and PS Miao
District Changlang
Arunachal Pradesh

VERSUS

1: THE STATE OF AP and 5 Ors.
Represented by the Secretary to the Govt. of Arunachal Pradesh, Home Department,
Itanagar, Arunachal Pradesh, PIN 791111

2: Sinegham Singpho
Son of Late Senentang Singpho

Resident of Village Lewang
PO and PS Miao
District Changlang

Arunachal Pradesh.

3:Moko Jowlon Singpho
Son of Late Moko Nong Sinpho

Resident of Village Lewang
PO/PS Miao
District Changlang
Arunachal Pradesh.

4:Indenam Singpho
Son of Late Inden Nong Sinpho

Resident of Village Phup
District Changlang
Arunachal Pradesh.

5:Indenlah Singpho
Son of Late Inden Nong Sinpho

Resident of Village Phup
PO/PS Miao
District Changlang
Arunachal Pradesh.

6:Miyangtang Singpho
Son of Late Miyangla Sinpho

Resident of Village Khagam Singpho

PO/PS Miao
District Changlang
Arunachal Pradesh

Advocate for the Petitioner : N Sarma

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 15.03.2023

Heard Mr. N Sarma, learned counsel for the petitioners. Also heard Mr. G Tado, learned Additional Public Prosecutor, Arunachal Pradesh.

The present petition is filed under Section 482 of the Cr.P.C. for quashing of judgment and order dated 13.02.2023 passed in Criminal Revision Petition No. 07/2022 by the learned Sessions Judge, Khonsa.

The background facts of the present case is that the petitioners herein alleging encroachment and apprehending breach of peace and tranquillity initiated a proceeding against the respondent Nos. 2,3,4,5 and 6 under Section 145 Cr.P.C. before the Additional Deputy Commissioner, Miao, Sub-division Miao, Changlang district.

The learned Additional Deputy Commissioner under its order dated 17.06.2021, after calling a report from the Extra Assistant Commissioner regarding the issue as well as from the OC, Miao Police Station upheld right of possession of the petitioners over the disputed land and also forbidden all disturbance of such possession until eviction of the petitioners by due process of law and both parties were directed to maintain peace and tranquillity in the area and not to create any breach of law and order related the same place.

Against such order, the respondents preferred an appeal before the learned Deputy Commissioner. The learned Deputy Commissioner directed for holding a meeting for amicable settlement of the dispute.

Such decision was again challenged by the petitioners before the learned Sessions Judge, Khonsa, which was registered as KSA Criminal Revision No.

03/2021.

The learned Sessions Judge by its order dated 18.09.2021 held that the learned Deputy Commissioner shall have no jurisdiction to sit over in an appeal against the order of the learned Additional Deputy Commissioner passed under Section 145 Cr.P.C. and the learned Sessions Judge went ahead by confirming the order of the learned Additional Deputy Commissioner.

Such decision was challenged before this court by the respondents through Criminal Petition 128/2021. The said petition was disposed of by this court holding that though the learned Sessions Judge was right in holding that the learned Deputy Commissioner shall have no jurisdiction to entertain an appeal passed under Section 145 Cr.P.C., however, this court further held that the learned Sessions Judge has committed error in confirming the order of the learned Additional Deputy Commissioner inasmuch as such order was not a subject matter of challenge before the learned Sessions Judge. Accordingly, this court has given a liberty to the petitioners in Criminal Petition No. 128/2021 to approach the learned Sessions Judge afresh challenging the order dated 17.06.2021 passed by the learned Additional Deputy Commissioner within a period of 30 days.

Accordingly, the respondents preferred a Revision before the learned Sessions Judge, Khonsa, which was registered as KSA Criminal Revision Petition No. 07/2022. The learned Sessions Judge by the impugned order has reversed the decision of the learned Additional Deputy Commissioner primarily on the ground that already a civil dispute is pending between the parties before the learned Deputy Commissioner, Changlang and therefore, on the same issues, the learned Additional Deputy Commissioner could not have exercised his power to pass an order under Section 145 (4) of Cr.P.C.

The learned counsel for the petitioner relying on Annexure-3 (a complaint dated 07.06.1998 against one Sri Pogam Singfo Ex-MLA) and Annexure-5 (appeal memo against the order passed in the complaint dated 07.06.1998) argues that the learned Sessions Judge, has committed serious error while deciding that the civil appeal and criminal disputes are between the same parties inasmuch as both the dispute are between different parties and therefore, such finding is wrong.

He further contends that in the meantime, by virtue of this impugned order, again the law and order situation has deteriorated, therefore, an interim protection may be granted.

Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor, Arunachal Pradesh. Perused the materials available on record including the Annexure-3 and Annexure-5 and also the impugned judgment passed by the learned Sessions Judge.

From the aforesaid, this Court is of prima facie view that the dispute involved in the civil appeal and the dispute involved under Section 145 are between two different set of parties.

This matter needs further consideration.

Accordingly, issue notice returnable four six weeks.

As Mr. G. Tado, learned Additional Public Prosecutor, for the State of Arunachal Pradesh accepts notice on behalf of the respondent No. 1, no formal notice need be issued in respect of respondent No. 1. However, extra copy be furnished to Mr. Tado, learned Additional Public Prosecutor.

The petitioner shall take steps for issuance of notice upon the respondent Nos. 2, 3, 4, 5 and 6, by way of registered post with A/D as well as by usual

process within a period of five days from today.

As an interim measure, till the return of notice, the status quo as on today in respect of disputed land shall be maintained by the parties.

JUDGE

Comparing Assistant