

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22754 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

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1. Jagnnath Prasad @ Jagnnath Sah

2. Laxman Prasad @ Laxman Sah

Both are sons of Late Asharfi Sah, resident of village- Sangrampur, Tola -
Ramna, P.S.- Sangrampur, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar

2. Adalat Ram son of Late Dharichhan Ram, resident of village- Sangrampur, Tola-
Ramna, P.S.- Sangrampur, District- East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Pandey, Advocate

For the State : Mr. Rajballabh Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-08-2017

Heard Mr. Pramod Kumar Pandey, learned counsel for the
petitioners and Mr. Raj Ballabh Singh, Additional Public Prosecutor
for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'the CrPC) has been filed for quashing
the order dated 21.03.2017 passed by the learned Additional Session
Judge-XIII, Motihari in Cr. Revision No.214 of 2014 whereby the
learned Additional Sessions Judge has dismissed the revision
application preferred against the order dated 22.01.2014 passed in
Case No.794 of 2013 under Section 133 of the CrPC by the learned
Sub Divisional Magistrate, Areraj.

3. By the aforesaid order dated 22.01.2014, the learned Sub



Divisional Magistrate, Areraj directed the Circle Officer, Sangrampur and the Officer Incharge, Sangrampur to remove the public nuisance caused over Gair Mazrue land situated in village- Sangrampur bearing Khata No.1553, Khesra No.7698 and 7964.

4. It would be manifest from the order passed by the learned Sub Divisional Magistrate, Areraj that on a complaint made by the opposite party no.2, an enquiry was handed over to the Circle Officer, Sangrampur, who submitted his report vide letter no.457 dated 16.12.2013 wherein it was mentioned that the land in question was Gair Mazrue land being used by the people at large as public way, but the petitioner had made encroachment over it and had constructed a thatched hut as a result of which the public way had become too narrow causing a lot of inconvenience to the masses. Having received the report of the Circle Officer, Sangrampur and taking into cognizance of the order passed by this Court in matter of Arun Kumar Mukherjee vs. State of Bihar (CWJC No.2290 of 1990), the Sub Divisional Magistrate, Sangrampur directed for removal of the public nuisance. The said order was challenged in revision by the petitioner, but the revisional court also after hearing the parties did not find any merit in the revision application. It was argued before the revisional court that the petitioners had not received notice of the proceeding under Section 133 of the CrPC before the court of Sub Divisional



Magistrate. However, on examination of the record, the revisional court gave a finding that the said plea taken by the petitioner was palpably false. The revisional court also held that record speaks that the petitioners not only received the notice but they also filed their Vakalatnama and contested the matter. The revisional court also expressed its satisfaction that there were sufficient materials to support the claim that the land over which nuisance was created was a public land. It was mentioned as Gair Mazrua Rasta in the cadastral survey.

5. Having heard learned counsel for the petitioners and learned counsel for the State, I see no material illegality or irregularity in the order passed by the revisinal court. Even otherwise, though this application has been filed under Section 482 of the CrPC, the same is in the nature of second revision, which is barred under Sub Section (3) of Section 397 of the CrPC.

6. Accordingly. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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