

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.50 of 2015

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1. Lal Bihari Mahto S/o Ganesh Mahto Resident of village - Ratanmala,
Tola - Bakulahara, P.S. Majhauria, District - West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Ramayan Singh S/o Late Shiv Govind Singh
3. Manoj Singh S/o Ramayan Singh Both Resident of village - Ratanmala,
Tola - Bakulahara, P.S. Majhauria, District - West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar
For the Respondent/s : Mr. Ram Bachan Singh (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

2 03-03-2017 Heard learned counsel for the parties.

2. The petitioner is aggrieved by an order, dated 07.11.2014 passed by learned 4th Additional Sessions Judge, Bettiah, West Champaran in Criminal Revision No. 185 of 2013, whereby he has set aside an order dated 26.07.2013 passed under Section 133 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**) by learned Sub Divisional Magistrate, Bettiah Sadar, Bettiah in Case No. 826M of 2005.

3. From the impugned order, I find that the Court below has set aside the said order of the Sub Divisional Magistrate on the ground of breach of Section 139 of the Code. From the materials on record, it transpires that



proceeding under Section 133 of the Code was initiated in the year 2005. For the purpose of determination of the dispute involved in the said proceeding, the learned Sub Divisional Magistrate relied on a report submitted by the Circle Officer prior to initiation of the said proceeding. In such circumstance, on the ground that report of the Circle Officer submitted before initiation of proceeding under Section 133 of the Code ought not to have been taken into account by the Sub Divisional Magistrate and he ought to have followed requirement under Section 139 of the Code, the order passed by the Sub Divisional Magistrate has been set aside by the Court below.

4. Chapter X of the Code deals maintenance of public order and tranquility. Section 133 of the Code under the said Chapter confers upon the District Magistrate, Sub Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government to make a conditional order for removal of public nuisance on receiving a report of the Police Officer or other information. The subsequent sections provide for issuance of show cause notice to whom the order is to be addressed. Section 137 prescribes the procedure where existence of public right is denied by the person against whom the order under Section 133 of the Code sought to be made. Section 138 of the Code



prescribes the procedure when such person appears in response to the show cause. Section 139 of the Code empowers the Magistrate to direct local inspection and examination of expert. The provisions do not empower the Magistrate to make order under Section 133 of the Code on the basis of evidence not adduced in course of enquiry stipulated under Section 137 of the Code in accordance with the procedure laid down under Sections 138 and 139 of the Code.

5. Apparently, the Sub Divisional Magistrate, while making the order has considered a document, which was not brought on record by way of evidence at the enquiry stipulated under Section 137 of the Code. The procedure adopted by learned Sub- Divisional Magistrate being in breach of Section 139 of the Code, I do not find any illegality in the impugned order.

6. This application has no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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