

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.24280 of 2017**

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Hridya Prasad, Son of Dudhai Sah,
  2. Ramnarain Singh, Son of Laxmi Singh,
  3. Mithai Lal @ Mithayee Lal Sah, Son of Late Vishwanath Sah,

All are residents of New Colony Tiwary Market, Bagaha-2 and P.S.- Bagaha,  
District- West Champaran.

.... .... Petitioners

Versus

1. The State of Bihar.
2. Vidya Kumar Singh, Son of Late Parmanand Singh, R/o Village- Tiwary  
Market, Bagaha-2, P.S.-Bagaha, District- West Champaran.

.... .... Opposite Parties.

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**Appearance :**

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate  
For the Opposite Party/s : Sri Shailendra Kumar-1, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 31-01-2018**

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioners for quashing the order dated 09.02.2017 passed by the learned Sessions Judge, Bettiah, West Champaran in Cr. Revision No. 238 of 2016 whereby the learned Sessions Judge has set aside the order dated 24.08.2016 passed by learned Sub-Divisional Magistrate, Bagaha in Case No. 34 of 2016.

2. Learned counsel for the petitioner submitted that the revisional court has passed an erroneous order on the presumption



that no local inquiry was conducted whereas the fact of the matter is that the Sub-Divisional Magistrate got an inquiry conducted through the Circle Officer and after perusal of the same, he came to the conclusion that there was a public road, which was encroached by the opposite party no. 2 by storing bricks, as a result of which common people found it difficult to use the public passage.

3. On the other hand, learned counsel for the State submitted that since the Sub-Divisional Magistrate has not followed the requirement of law while invoking the power under Section 133 of the Cr.P.C., the revisional court has rightly set aside the order passed by the Sub-Divisional Magistrate. He submitted that since opposite party no.2 had filed his show-cause and denied the existence of public road, the Magistrate was required under Section 138 of the Cr.P.C. to take evidence in the matter as in summons case and thereafter only, he could have passed the order for removal of any obstruction.

4. I have heard learned counsel for the parties and perused the record.

5. It would be manifest from the record that the case of opposite party no. 2 before the Sub-Divisional Magistrate was that there was no existence of public road, as the land in question is *raiyati* and purchased land of opposite party no. 2. It was also



contended by him in the show-cause that it was never a public land nor even being used as public *rasta*. Out of ulterior, mala fide and dishonest motive, the petitioner had got the proceeding under Section 133 of the Cr.P.C. initiated.

6. It would further appear that save and except, the report of Circle Officer, there was no other material for the Sub-Divisional Magistrate to come to the conclusion that there was existence of public road. Once, opposite party no. 2 had filed its show-cause and denied the existence of public road, then it was incumbent upon the Sub-Divisional Magistrate to hold inquiry according to Section 138 of the Cr.P.C. before passing any final order regarding existence of public road and removal of bricks from the land in question.

7. In that view of the matter, if the revisional court set aside the order of the Sub-Divisional Magistrate, I see no illegality in the order impugned. The application is dismissed.

**(Ashwani Kumar Singh, J.)**

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