

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37687 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Ajay Kumar, son of Late Ramchandra Prasad,

2. Chandrabhushan Prasad son of Late Ramchandra Parasad,

Both are resident of Mohalla- West Lohanipur, P.S.- Kadamkuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

2. The Sub Divisional Magistrate, Patna Sadar, Patna.

3. Pramod Kumar Singh son of Late Basudev Singh, resident of Mohalla- West Lohanipur, Near Ghraunda Apartment, P.O.- Kadamkuan, P.S.- Kadamkuan, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-03-2018

Being aggrieved by the order dated 10th February, 2017 passed by the learned Additional Sessions Judge-X, Patna in Criminal Revision No.419 of 2013, the petitioners have filed the present application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.').

2. The afore-stated Criminal Revision No.419 of 2013 was directed against the order dated 18.05.2013 passed by the learned Sub



Divisional Magistrate, Patna Sadar in Case No.1800(M) of 2011 in a proceeding under Section 133 of the Cr.P.C. by which he had directed the opposite party no.3 to remove construction from the private road of the petitioners. The revisional court while passing the impugned order held that there is no finding by the learned Sub Divisional Magistrate, Patna Sadar, that the passage in question is used by the public at large. He has held that the learned Magistrate could not pass a conditional order under Section 133(1) of the Cr.P.C. unless he had information that obstruction had been caused to a way which is lawfully used by the public.

3. Learned counsel for the petitioners submitted that the impugned order is bad in law in view of the fact that there is clear finding by the learned Sub Divisional Magistrate that the opposite party no.3 had made construction over the private land of the petitioners. He submitted that for applicability of Section 133(1) of the Cr.P.C., it is not necessary to give finding that public at large had a right of way which is being obstructed or on which nuisance is made.

4. Having heard learned counsel for the petitioners and perused the record, I am of the opinion that no error can be found with the order passed by the revisional court. It is well settled principle of law that for applicability of Section 133(1) of the Cr.P.C. there must be evidence to show that obstruction on which nuisance is made is a public



way or it must be a public place. Where dispute is in relation to the private passage between the parties, the jurisdiction under Section 133 cannot be exercised by Magistrate.

5. In that view of the matter, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md.S./-

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