

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41682 of 2017

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

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Kanhaiya Sah, S/o Late Natho Sah, Resident of Village- Sanhaouli, Ward No. 15,
P.S.- Chitraguptanagar, District- Khagaria.

.... Petitioner

Versus

1. The State of Bihar.
2. Jiwan Singh,
3. Dharambir Singh.
4. Shivam Singh.
5. Rituraj Singh,

All Sons of Late Ramdeo Singh, resident of Village- Sanhaoulo, P.S.-
Chitraguptanagar, District- Khagaria.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Rakesh Chandr, Advocate
For the Opposite Party/s : Mr. Nand Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 16-03-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing the order dated 09.05.2017 passed by the learned Additional District Judge, III, Khagaria in Cr. Revision No. 109 of 2016 by which he has set aside the order dated 05.11.2016 passed by the learned Sub-divisional Magistrate, Khagaria in Case No. 506 M of 2014 under Section 113 of the Cr.P.C. by which the flour mill of opposite party nos. 2 to 5 was ordered to be closed.



2. Learned counsel for the petitioner submitted that on the complaint of the petitioner, a proceeding under Section 133 of the Cr.P.C. was initiated against opposite party nos. 2 to 5 and in that case after the notices were served and the opposite parties appeared and filed their show-cause, the learned Magistrate directed them to close their flour mill, which was running in a densely populated area. He submitted that the flour mill was causing health hazard to the people of the locality and the learned Magistrate had rightly passed the order in exercise of power conferred under Section 133 of the Cr.P.C., but the same was mechanically set aside by the revisional court without appreciating the facts and law involved in the case.

3. I have heard learned counsel for the petitioner and perused the record.

4. It would be manifest from the order impugned dated 05.11.2016 passed by the learned Sub-divisional Magistrate, Khagaria that no inquiry was conducted into the complaint made by the petitioner before passing the order for closing the flour mill. Section 133(1) of the Cr.P.C. mandates that before passing a conditional order for removal of nuisance, the learned Sub-divisional Magistrate or any other Executive Magistrate is required to take evidence. It would further appear from the order passed by the learned Sub-divisional Magistrate that no person came forward to



support the contention of the petitioner that the flour mill being run by opposite party nos. 2 to 5 was injurious to health or physical comfort of the community.

5. In view of above, if the revisional court has set aside the order passed by the learned Sub-divisional Magistrate, I see no illegality in the order. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2018
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