

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27181 of 2018

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

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Parmanand Pandit Son of Lakshmi Pandit Resident of Village Baghara, P.O. Baghara, P.S. Patori (Mohanpur O.P.), District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ramanand Pandit
3. Amarnath Pandit
4. Ram Kumar Pandit All sons of Late Ramashray Pandit Resident of Village Baghara, P.O. Baghara, P.S. Patori (Mohanpur O.P.), District - Samastipur.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dhananjay Kumar, Advocate.
For the Opposite Party/s : None.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 31-08-2018

Heard learned counsel for the petitioner. Nobody appears on behalf of the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 31.10.2017 passed by the learned Presiding Officer, Fast Track Court-1, Samastipur in Criminal Revision No. 550 of 2003/ 02 of 2017 whereby he has set aside the order dated 14.05.2003 passed in M.R. Case No. 153 of 2001 by which direction was given to the opposite parties to remove obstruction from the land used as Rasta under Section 147 of the Cr.P.C.



3. Learned counsel for the petitioner submitted that the impugned order passed by the Revisional Court is perverse in view of the fact that he has allowed the revision application only on the ground that the record of the Court of Magistrate was not made available to him. He contended that the petitioner was neither the custodian of the record nor he was in any manner responsible for transmitting the record to the revisional court. He contended that the Sub Divisional Magistrate had clearly opined that because of obstruction created by the opposite parties there was an imminent apprehension of breach of peace and thus the revisional court should not have revoked the order passed by the Magistrate.

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

5. Learned counsel for the petitioner is right in his submission that the revisional court ought not to have dismissed the application only on the ground that the record of the court of Magistrate was not produced before him for perusal. However, after perusing the order dated 14.05.2013 passed by the learned Magistrate under Section 147 of the Cr.P.C, I find that the same was passed only on the ground that there was some obstruction created by the opposite parties as a result of which there was apprehension of breach of peace. In the opinion of this Court, even though the revisional court had set



aside the order of Magistrate on erroneous ground, the order passed by the learned Magistrate can not be justified for the simple reason that the order under Section 147 of the Cr.P.C could have been passed only if the Magistrate would have formed his opinion that a right existed in someone, which was exercised within three months of receipt of information or police report and an interference has been made with the exercise of such right which is likely to cause a breach of peace. In the instant case, though the Magistrate has given a finding that there is dispute between the parties regarding Rasta and some obstructions has been created by the opposite parties, but the Magistrate has not given any finding that the petitioner had exercised his right within three months of the receipt of the information or the police report.

6. In that view of the matter, though the order of the revisional court is erroneous, I am not inclined to interfere with the same. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	NA
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