

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.1096 of 2018**

1. Jeevrakhan, aged about 70 years, S/o Agnu Ram.
2. Laluram, aged about 50 years, S/o Jeevrakhan Sahu.
3. Harilal, aged about 43 years, S/o Jeevrakhan Sahu.
4. Pileshwar, aged about 35 years, S/o Jeevrakhan Sahu.

All of above are R/o Vill.- Uperwah, P.S.- Ghumka, Tah.-
Rajnandgaon, Civil and Revenue District Rajnandgaon (CG)

---- Petitioners**Versus**

1. Than Singh, aged about 45 years, S/o Lacchi Ram Sahu, R/o Vill.- Uperwah, P.S. Ghumka, Tah.-Rajnandgaon, Civil and Revenue District Rajnandgaon (CG)
2. State of Chhattisgarh Through District Magistrate, Rajnandgaon, District Rajnandgaon (CG).

---- Respondents

For Petitioners	:	Mr. Rakesh Thakur, Advocate
For Respondent No.1	:	None.
For Respondent No.2	:	Mr. Aditya Tiwari, Panel Lawyer

Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****10/11/2021**

1. Challenge in this petition is to the order dated 19.3.2018 passed by learned Additional Sessions Judge (FTC), Rajnandgaon in Criminal Revision No.39/2017 thereby affirming order dated 26.4.2017 passed in Criminal Case No.80/2014 by which learned Sub Divisional Magistrate, Rajnandgaon has allowed application of respondent No.1 filed

under Section 133 of CrPC and directed petitioners to remove obstruction from the passage which was being used by respondent No.1 for approaching his house.

2. Mr. Rakesh Thakur, learned counsel for petitioners would submit that findings recorded by learned Sub Divisional Magistrate as also revisional Court are factually incorrect. Referring to panchnama, which is part of Annexure P-5, he submits that from perusal of panchnama it is clear that in the spot map there is no mention of any passage for approaching house of respondent No.1. Order under Section 133 of CrPC can only be passed when road, as alleged, is a public road. The area subject matter in dispute is not public road. Hence, application under Section 133 of CrPC itself was not maintainable. He prays that orders Annexure P-1 & P-2 be set aside.

3. Per contra, Mr. Aditya Tiwari, learned Panel Lawyer for the State opposes the submissions made by learned counsel for petitioners and submits that upon filing application under Section 133 of CrPC, the Sub Divisional Magistrate ordered for an enquiry through the Naib Tahsildar, Rajnandgaon, who after conducting spot inspection submitted his report mentioning that petitioners have obstructed passage after one year of construction of cemented house by respondent No.1. Passage which was being used by respondent No.1 for approaching his house, is closed by petitioners by raising obstruction / constructing a wall of mud & stone, extending place for keeping

his cattle. Report was prepared based on oral submissions of petitioners, respondent No.1 and other villagers present on spot. Based on enquiry report, the Sub Divisional Magistrate passed order dated 26.4.2017 and directed petitioners to remove obstruction from passage. He submits that submission of learned counsel for petitioners cannot be accepted because when opportunity to produce evidence was granted to petitioners, they did not adduce any evidence before the Sub Divisional Magistrate. Even respondent No.1 not adduced any evidence. There is no illegality or infirmity in the order impugned warranting interference of this Court. Petition filed by petitioners has no substance and the same is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the documents placed on record.
5. To appreciate submissions made by learned counsel for both sides, I have perused panchnama placed on record along with Annexure P-5, which *prima facie* shows some small passage in between houses of petitioners and respondent No.1. Based on this panchnama, Naib Tahsildar submitted report dated 9.12.2014. Perusal of the order impugned dated 19.3.2018 would show that learned Sub Divisional Magistrate has fixed the case for recording of evidence of both the parties, but none of the parties adduced any evidence before the Magistrate in support of their respective case. The Sub Divisional Magistrate based on documents and material available on record has

arrived at a conclusion that there was passage, used by both parties for their own use and for their cattle, which is closed by petitioners by raising a wall of stone and mud. Naib Tahsildar in enquiry report dated 9.12.2014 as also Gram Panchayat Uparwah in its meeting dated 20.3.2016 has resolved under Resolution No.3 that disputed place is a public road on which petitioners have raised obstruction. Hence, the Sub Divisional Magistrate passed the order for removal of obstructions raised by petitioners.

6. Taking into consideration the facts recorded by the Sub Divisional Magistrate in the order dated 26.4.2017 and further considering the fact that even after grant of opportunity, petitioners have not adduced any evidence before the Sub Divisional Magistrate in support of their case, I do not find any good ground to interfere with the order impugned affirming order of Sub-Divisional Magistrate in exercise of jurisdiction under Section 482 of CrPC.

7. The petition is accordingly dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-