

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.3278 of 2018**

Arising Out of PS. Case No.- Year-1111 Thana- District- Patna

Dr. Binod Kumar Jha Son of Sri Kusheshwar Jha, Resident of Mohalla-  
House No. 1/A-2, Ashiana Nagar Phase No. 1, Police Station- Rajiv Nagar,  
District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar Through The District Magistrate, Patna Bihar
2. The District Magistrate, Patna.
3. The Director General Of Police, Patna Police Head Quarter, Old Secretariat,  
Patna Now new Building
4. The Senior Superintendent of Police, Patna.
5. The SHO Rajiv Nagar, Police Station, Patna.
6. The Sub Divisional Magistrate, Sadar, Patna.
7. Ashiana Co Operative Housing Society Limited, Registration No. 361  
PAT/79, Registered office Exhibition Road, patna, through its chairman,  
Now through Registrar Cooperative, Government of Bihar, P.S. - Schiwalia  
(Administration) Patna.
8. Sadan Kumar Lal Das, Son of Late Bindeshwar Lal Das, Resident of  
Resident of Mohalla- House No. 1/A-1, Ashiana Nagar Phase no. 1, Police  
Station- Rajiv Nagar, District- Patna.

... .. Respondents

**Appearance :**

|                      |   |                                                                           |
|----------------------|---|---------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Shailendra Kumar Jha, Advocate<br>Mr.Choudhary Shyam Nandan, Advocate |
| For the Respondent/s | : | Mr.Deepak Kumar, AC to GP-4                                               |
| For the Resp. No. 8  | : | Mr. P:rabhash Ranjan, Advocate                                            |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

7      26-07-2022                      Heard learned counsel for the petitioner, learned  
counsel for the respondent no. 8 and learned AC to GP-4 for the  
State.

Petitioner in this case is seeking a writ in the nature of  
mandamus commanding the respondent nos. 2, 4, 5 and 6 not to  
harass the petitioner by way of institution of proceedings under



Sections 107, 144 and 133 under the provisions of the Code of Criminal Procedure.

It is alleged that respondent no. 8 who is in service of police force presently working in SSB Patna as Pay and Accounts Officer has indulged in harassing the petitioner. The petitioner also challenged the order dated 08.09.2018 passed by learned S.D.M., Patna in Case No. 1212M/2018 by which he was called upon to file his show cause.

Another prayer of the petitioner is to direct respondent nos. 2, 4, 6 & 7 to inquire into the matter regarding allotment of Duplex Houses No. 1/A-2 and 1/A-1 with proper area to petitioner and respondent no. 8 who are purchasers from the original allottee.

Today, learned counsel for the petitioner has informed this Court that during pendency of this application the Sub-Divisional Officer has passed final order in case no. 1212/M/2018 which was initiated under Section 133 Cr.P.C. By the impugned order the S.D.M. has directed the petitioner to remove the encroachment made on the common sewerage which is causing difficulties in cleaning of the sewerage and is also resulting in spread of dirty water in the premises.



The final order dated 26.02.2022 has been challenged by filing interlocutory application being I.A. No.02/2022.

At the outset, this Court called upon learned counsel for the petitioner to say as to how the order passed in a proceeding under Section 133 Cr.P.C. may be challenged in a criminal writ petition and what will be the nature of the proceeding thereunder, learned counsel for the petitioner is unable to demonstrate that the nature of the proceeding under Section 133 Cr.P.C. would be essentially in the nature of a criminal proceeding.

At this stage, learned counsel for the petitioner seeks permission to withdraw the interlocutory application in order to enable him to challenge the order dated 26.02.022 passed by the S.D.M. in Case No. 1212/M/2018 in competent jurisdiction.

Permission is granted.

I.A. No. 02 of 2022 is permitted to be withdrawn with liberty as prayed for.

So far as the prayer made in the main writ petition is concerned, since the final order under Section 133 Cr.P.C. has already been passed, nothing remains for adjudication in the present writ application. It is, thus, disposed of with liberty to the petitioner to raise all such pleas which are available to him



while challenging final order under Section 133 Cr.P.C. in an appropriate application.

This application stands disposed off accordingly.

Considering that the petitioner was prosecuting his remedy before this Court under a bonafide belief, this Court directs the Sub-Divisional Magistrate, Sadar, Patna not to take any coercive action against the petitioner for the present for a period of 30 days from today in order to enable him to seek his remedy.

**(Rajeev Ranjan Prasad, J.)**

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

