

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3660 of 2015

Rabindra Kumar Routray* *Petitioner

Mr. K.C.Dash,
Advocate

-versus-

State of Odisha & another* *Opp. Parties

Mr. S.Mishra,
Additional Standing Counsel
Mr.D.Mohanta, *Advocate for O.P.*
No.2.

**CORAM:
MR.JUSTICE G. SATAPATHY**

**ORDER
17.08.2022**

Order No.

05. 1. This is an application under Section 482 Cr.P.C. filed by the petitioner with a prayer to quash the order dated 17.7.2015 passed by the learned Addl. Sessions Judge, Jajpur in Criminal Revision No. 39 of 2013 confirming the order dated 22.11.2013 passed by learned S.D.M., Jajpur in Misc. Case No. 422 of 2011.
2. Heard Mr.K.C.Dash, learned counsel for the petitioner, Mr.S.Mishra, learned Addl. Standing Counsel and Mr.D.Mohanta, learned counsel representing opposite party No.2.
3. In course of hearing learned counsel for the petitioner fairly submits that it's a year old matter and in the meantime the branches of the tree which allegedly caused nuisance have been broken down and there is hardly anything to confirm the order passed by the learned S.D.M., Jajpur and the learned Court of Additional Sessions Judge, Jajpur. He however further submits that the order having been passed mechanically should

be quashed.

4. On the other hand learned counsel for opposite party No.2 submits that he has got instruction from his client two months back that the branches are still over the Asbestos of the opposite party No.2 and in the meantime new branches have come and causing severe nuisance and obstruction in the beneficial enjoyment of the said room.

5. It is true that the learned S.D.M., Jajpur by the impugned order passed in C.M.C. No. 422 of 2011 has directed removal of nuisance and the learned S.D.M. after detailed analysis of the materials produced before him and the evidence of witnesses examined on behalf of the opposite party so also the witness of the petitioner has passed the impugned order directing the petitioner to remove the branches of jack fruit tree which is lenning over the residential house of the petitioner within seven days from the date of receipt of the order positively. The present petitioner has unsuccessfully challenged the order passed by learned S.D.M, Jajpur in revision before the learned Addl. Sessions Judge, Jajpur. It is true that the learned S.D.M., Jajpur has passed the order in the year 2013 and in the meantime nine years have already elapsed. There cannot be any dispute that removal of nuisance as contemplated under Section 133 Cr.P.C. being urgent in nature should have been removed. However, after carefully going through the order of learned S.D.M., Jajpur and learned Addl. Sessions Judge, Jajpur, on the face of rival submission advanced on behalf of the parties, especially the order of learned S.D.M. having confirmed in revisional jurisdiction, this Court hardly finds any merit to interfere with the impugned order.

6. Accordingly the CRLMC is dismissed.

7. Urgent certified copy of the order be granted on proper application.

