

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7080 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Saran

Munshi Prasad, Son of Late Satya Narayan Mahto R/o village - Sonbarsa
Mathiya, P.S.- Manjhi, District - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Saran at Chapra. Bihar
2. The District Magistrate, Saran at Chapra. Bihar
3. The Sub Divisional Magistrate, Sadar, Saran at Chapra. Bihar
4. Ram Pukar Prasad Son of Late Basudeo Prasad R/o village - Sonbarsa
Mathiya, P.S.- Manjhi, District - Saran at Chapra.
5. Dharam Nath Mahto Son of Late Sheo Pujan Mahto R/o village - Sonbarsa
Mathiya, P.S.- Manjhi, District - Saran at Chapra.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Tej Pratap Singh, Advocate
For the Opposite Party/s : Mr. Md. Ataur Rahman, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

Date: 16-02-2023

Heard learned counsel for the petitioner and the
learned APP for the State.

2. The present petition has been preferred for setting
aside the order dated 02.12.2022 passed by the learned
Additional Sessions Judge, VIIIth, Saran at Chapra in Cr.
Revision No.105 of 2022 by the opposite party no.2, by which
the order dated 30.03.2022 passed by the learned Sub-Divisional
Magistrate, Sadar, Saran at Chapra in Case No.996 of 2021
under Section 133 of the Cr.P.C. was interfered with.

3. The facts of the case is/are as follows:

(i) the O.P. No.4, Ram Pukar



Prasad on 10.06.2021 filed an application under Section 133(A) Code of Criminal Procedure for removal of obstruction from the passage urgently stating there in that both the petitioner and O.P. Nos.4 and 5 are agnates and have houses with opening of the door at eastern direction having 10"x80" long passage which connects the main road running from East to West;

(ii) the petitioner had earlier tried to get permanent injunction for the aforesaid passage in Title suit no.110/2018 before the learned court of Munsif-IV, Saran at Chapra and had preferred application for grant of temporary injunction in the said Title suit but the same was rejected vide an order dated 16.11.2018 and against the order of rejection, he preferred Miscellaneous Appeal which was pending as M.A. No.19 of 2020;

(iii) the petitioner obstructed the passage in such away that only two feet land



has been left by him out of 10 feet land and for removal of that obstruction, the O.P. No.4 filed the instant application being case no.996 of 2021.

4. The case of the petitioner is that the land in question is his exclusive property that cannot be used for 'Raasta' (passage). Further, his agnates have access to their house on the west side with the road and thus cannot say that they have no access to road.

5. The petitioner further submitted that Title suit no.110 of 2018 was filed by the petitioner against O.P. No.4 & others which is pending before the court of learned Munsif, IVth, Saran at Chapra for grant of permanent injunction on the land bearing Khata No.399 Survey Plot No.719 and Khata No.381, Survey Plot No.896, 724 & 723 Area-10 Feet x 80 Feet.

6. Further, the application filed by the petitioner under order 39 rule 1 for grant of temporary injunction in regard to land in dispute was dismissed by the learned court vide an order dated 16.11.2018 passed in the said Title suit on the technical ground that indirect relief cannot be granted which takes place of direct relief.

7. It has been submitted by the learned counsel that



pursuant to the application preferred by the opposite party no.4, namely, Ram Pukar Prasad, the petitioner was noticed. Accordingly, he filed reply/written objection/show-cause stating therein that land in question (80 feet x 10 feet) on the eastern side of his house is his own land and cannot be allowed for a common passage.

8. The further contention was that during the partition, the land had fallen in the share of the petitioner but the opposite party no.4 wants its dispossession and the petitioner having no option had to file Title Suit No.110 of 2018 for permanent injunction before the court of learned Munsiff, IVth, Saran at Chapra which is pending.

9. The further contention was that opening of all the houses including that of the petitioner and the opposite parties are on the west side having connectivity with the road.

10. Having gone through the contention of both the parties, an inquiry was conducted by the learned S.D.M., Chapra from the concerned police station as also the Circle Officer. Accordingly, they submitted report stating that the land in question is disputed one falling under Khata No.399 and 381, Survey Plot No.719, 838, 724, 723 which is/are used by all the agnates as also local people for visiting the temple of Goddess



‘Kali’.

11. The learned Sub-Divisional Magistrate, Sadar, Saran at Chapra thereafter vide an order dated 30.03.2022 recorded the report of the Circle Officer, Manjhi that the passage was made through the joint expenses of both the parties which is also being used by the villagers to visit Goddess ‘Kali’ temple but later the opposite party (the petitioner herein) decided to get it closed. It further held that the SHO, Manjhi P.S. also gave the similar report apprehending breach of peace.

12. However, taking into account that a Title suit is pending before the learned Munsif, IVth, Chapra vide Title Suit No.110 of 2018 and Misc. Appeal No.19 of 2010 before the learned District & Sessions Judge, Saran at Chapra, the learned SDM, Sadar, Chapra chose to close the proceeding.

13. Aggrieved, the opposite party no.4 preferred Cr. Revision No.105/2022 before the learned Sessions Judge, Saran at Chapra which was taken up by the learned Additional Sessions Judge, VIIIth, Saran at Chapra.

14. Having heard both the parties, learned Additional Sessions Judge, VIIIth, Saran at Chapra vide a reasoned order dated 30.03.2022 held that till the disposal of Title Suit No.110 of 2018, the applicant are entitled to use the road in question



and further directed the Sub-Divisional Magistrate, Sadar, Saran at Chapra to remove the obstructions.

15. Aggrieved, it was now the turn of the petitioner to prefer the present petition.

16. Learned counsel for the petitioner straight away took this Court to Section 133(2) of the Cr.P.C., which read as follows:

“133. Conditional order for removal of nuisance.-(1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this of behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-”

“(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.”

17. Learned counsel for the petitioner as such submits that the learned Additional Sessions Judge, VIIIth, Saran at Chapra had no authority to entertain the petition and/or pass an order with the aforesaid direction that was given to the learned SDM, Sadar, Chapra for removal of obstruction as the



order passed by the learned Magistrate could not have been entertained by the Civil Court.

18. He further submitted that as per the initial words of Section 133 of the Cr.P.C., the order could have been challenged before the District Magistrate of the said district and not before the Sessions Court.

19. The next contention of the learned counsel for the petitioner is that when the Title Suit No.110 of 2018 was pending, the opposite party no.2 could have preferred a petition before that court instead of moving in criminal revision.

20. Learned counsel for the petitioner specifically took this Court to paragraph-11 of the petition which read as follows:

“11. That from the various judgement and order passed by the Hon’ble Supreme Court as well as High Courts it has been settled that:-

(i) Proceeding under section 133 of Cr.P.C. cannot be used for settlement of the private dispute.

(ii) An order under this section can be passed only if, there is nay (sic) imminent danger to the physical comfort of the public and the imminent danger must lead to public nuisance.



(iii) An order u/s 133 Cr.P.C. cannot be substituted with Civil Proceeding.

(iv) The Provision only comes into play when there is a some of urgency and not when two nuisance has been in place for long period of time.”

21. He further took this Court to an order dated 21.04.2018 passed in in Case No.186/2018 (*Dharamnath Mahto vs. Rampukar Mahto*) in which Section 144 Cr.P.C. was initiated but was closed taking into account that a Title Suit No. 110/2010 is pending before the learned of learned Munsif, Ivth, Chapra.

22. Learned counsel for the petitioner cited a decision of Patna High Court reported in **2013 (1) PLJR 615** (*Babu Saheb Raut Versus The State Of Bihar & Ors.*) with specific reference to **paragraph-13** which read as follows:

“13. The Hon'ble Apex Court in the case of Suhelkhan Khurdyarkhan (supra) has analyzed the scheme, scope and mandate of Section 133 Cr.P.C, particularly in paragraphs 11,12 and 13 of its judgment. The Hon'ble Apex Court has clearly held that the proceeding under Section 133 Cr.P.C. is not intended to settle private disputes between two rival groups of people. In the present case, dispute between the petitioner and opposite party no. 4, as



projected in the impugned order, appears to be a dispute of private in nature”

23. Learned counsel thus concluded stating this to be private dispute between the parties, the learned Additional Sessions Judge, VIIIth, Saran at Chapra erred in giving directions to the learned SDM, for removal of the obstruction.

24. Per contra, learned APP submits that it is bizzare to interpret Section 133 of the Cr.P.C. in such a way that an order of the learned Sub-Divisional Magistrate can be challenged before the learned District Magistrate and not in Criminal Revision.

25. He further submits that a plain reading of Section 133 of the Cr.P.C. shows that *whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit considers that there is any unlawful obstructions or nuisance which should be removed, he shall take necessary steps in accordance with law.*

26. He as such submits that under no circumstance, an order of the learned Sub-Divisional Magistrate can be challenged before the District Magistrate. He further submits



that there is no bar in moving before the learned Sessions Judge in revision against an order passed by the learned Sub-Divisional Magistrate and the contention put forwarded by the learned counsel for the petitioner that Civil Court in the light of sub-section (2) of Section 133 of the Cr.P.C. cannot entertain the petition in Cr. Revision is fit to be rejected.

27. Having gone through the facts and circumstance of the case, this Court find force in the submissions put forward by the learned APP. The understanding of the learned counsel for the petitioner that against the order passed by the learned Sub-Divisional Magistrate, the opposite party no.4 should have preferred petition before the District Magistrate is without any logic. The content of Section 133 Cr.P.C. is very clear when it says that the a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government can act in the matter and as such under no circumstance the same can be construed that the order can be challenged before the District Magistrate.

28. The question that has been raised in the case is whether the learned Sessions Court could have entertained the criminal revision petition against the order of the learned SDM in the light of Section 133(2) of the Cr.P.C.



29. In this connection, the court got hold of an order of Punjab & Haryana High Court in *Bheem Sain and another vs. Arjun Singh and others* reported in **2009 SCC Online P & H 4532** where it has been stated as follows:

*"2. In appeal, however, the learned Additional District Judge reversed the finding and ordered the restraint of defendants- petitioners "from demolishing any part of the house of the plaintiff/appellant on the basis of the order dated 24.3.2006 passed **** by the SDM, Abohar forcibly and illegally, except in due course of law."*

3. It is apparent from the record that the defendants- respondents had applied for the invalidation of the impugned order passed by the learned S.D.M. vide which the removal of the impugned encroachment had been ordered in terms of provision of Section 133 of the Cr.P.C. It is apparent from a perusal of the plaint (copy whereof has been shown at the time of arguments before this Court) that the factum of that order had not been called into question. It is only in the course of the presentation before this Court that the learned counsel for the plaintiff-respondent argues that the entire exercise is a political managed affair and that even the application, on the basis whereof the proceedings had been taken is not available on the record. No such averment finds mention in the plaint. A plea to that effect cannot be allowed to be raised in revision in the absence of pleadings at the trial.

4. If the plaintiff-respondent has a grievance



qua the validity of the impugned order (on an averment that provision of Section 133 Cr.P.C. had not been complied with), he may take recourse to the remedy available to him in the form of an appeal or revision. Sub Section 2 of Section 133 Cr.P.C. prima-facie appear to the filing of a suit to challenge of an order of that category. If the affected party has a grievance with regard to the validity of an order under Section 133 Cr.P.C., the challenge thereto has to be filed before the competent Court of law on the appellate or revisional side by that party. That party cannot validly file a civil suit against the order passed by the S.D.M. in the proceedings under Section 133 Cr.P.C.

5. In the light of foregoing discussion, the petition shall stand allowed. The impugned order passed by the learned Ist Appellate Court shall stand reversed. The order passed by the learned Trial Court shall stand restored.

6. However, in the circumstances of the case, it is deemed just and appropriate to order that the learned Trial Court shall dispose of the main suit itself within three months from the next date of hearing. The learned counsel for the parties state at the bar that the parties shall extend all possible cooperation in concluding their respective evidence at the trial at an early date”

30. This Court also got hold of another order of Hon’ble Apex Court in **Kachrual Bhagirath Agrawal & Ors. vs State Of Maharashtra & Ors.** reported in **(2005) 9 SCC 36.**



31. In that case, the order of the learned SDM, Sakoli was challenged in Cr. Revision No.17 of 1989 before the learned Additional Sessions Judge, Gondia which heard and held that the learned SDM had arbitrarily used the direction in favour of original applicant and accordingly allowed the revision application. Aggrieved, some of them moved before High Court which set aside the revisional Court order and affirmed the order of learned SDM. Aggrieved the other side approached the Hon'ble Apex Court.

32. The Apex Court after hearing the parties held as follows:

“3. In this view of the matter, learned SDM, Sakoli, held that the applicants proved public nuisance and physical discomfort to them. Consequently, learned SDM, Sakoli, proceeded to pass an order under Section 133 of the Code, operative part of which reads as follows:

"The non-applicant is hereby directed that he will not keep, store and transport chillies in the godown, Vishnu Kunj as the same is injurious to the health and physical comfort of the community and he shall also remove all the goods stored therein. This order shall be given effect from 22nd February, 1989.



Notice in form No.21 be issued to the non-applicant."

4. Feeling aggrieved by this order, the present appellants preferred Criminal Revision Application No.17 of 1989 in the court of the Additional Sessions Judge, Gondia. The learned Additional Sessions Judge proceeded to reassess the evidence adduced by the parties and came to the conclusion that the learned SDM, committed error in holding that the business of the non-applicant causes public nuisance. He further held that the learned SDM ignored the evidence adduced on behalf of the non-applicant and attached too much importance to the evidence of the applicants. The learned Additional Sessions Judge further held that the learned SDM had arbitrarily used his discretion in favour of the original applicants and, therefore, it was a fit case to interfere with the impugned order. In this view of the matter, the learned Additional Sessions Judge allowed the revision application filed by the original non-applicant and set aside the order passed by learned SDM. A Criminal Revision Application was filed by some of the original applicants before the High Court to set aside the revisional order.



5. Originally, there were ten applicants, five of whom later on had withdrawn. Therefore, five of the original applicants moved the High Court, which came to hold that the conditions requisite for passing of order under Section 133(1)(b) as well as final order under Section 138 of the Code were not fulfilled. Accordingly it set aside order of the revisional Court.”

33. The Hon’ble Apex Court thereafter dealt with Section 133 in para 9 and observed as follows:

“9. Section 133 so far as it is relevant for our purpose reads as follows:

“133. Conditional Order For Removal of Nuisance. (1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers -

(a) xx xx xx

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c)- (f) xx xx xx

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation,



or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order -

(i) xx xx xx

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to (vi) xx xx xx

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

xx xx xx"

10. A proceeding under Section 133 is of a summary nature. It appears as a part of Chapter X of the Code which relates to maintenance of public order and tranquility. The Chapter has been classified into four categories. Section 129 to 132 come under the category of "unlawful assemblies". Section 133 to 143 come under the category of "public nuisance". Section 144 comes under the category of "urgent cases of nuisance or apprehended danger" and the last category cover Section 145 to 149 relating to "disputes as to immovable property". Nuisances are of two kinds, i.e. (i) Public; and (ii) Private. 'Public nuisance' or



'common nuisance' as defined in Section 268 of the Indian Penal Code, 1860 (in short the 'IPC') is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general or by neglecting to do anything which the common good requires. It is an act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. 'Private nuisance' on the other hand, affects some individuals as distinguished from the public at large. The remedies are of two kinds civil and criminal. The remedies under the civil law are of two kinds. One is under Section 91 of the Code of Civil Procedure, 1908 (in short 'CPC'). Under it a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him. There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of IPC. The second provides for summary proceedings under Sections 133 to 144 of the Code, and the third relates to remedies under special or local laws. Sub-section (2) of Sections 133 postulates that no order duly made by a Magistrate under this Section shall be called in question in any civil Court. The provisions of Chapter X of the Code should be so worked as not to become themselves a nuisance to the community at large. Although every person is bound to so use his property that it may not work legal damage or harm to his neighbour; yet on the other hand, no one has a right to interfere with the free and full enjoyment by such person of his property, except on clear and absolute proof that such use of it by him is producing such legal damage or harm. Therefore, a lawful and



necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community. Proceedings under Sections 133 are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience. A comparison between the provisions of Sections 133 and 144 of the Code shows that while the former is more specific the latter is more general. Therefore, nuisance specially provided in the former section is taken out of the general provisions of the latter section. The proceedings under Sections 133 are more in the nature of civil proceedings than of criminal nature. Sections 133(1)(b) relates to trade or occupation which is injurious to health or physical comfort. It deals with itself physical comfort to the community and not with those which are in themselves nuisance but in the course of which public nuisance is committed. In order to bring a trade or occupation within the operation of this Section, it must be shown that the interference with public comfort was considerable and a large section of the public was affected injuriously. The word 'community' in Clause (b) of Sections 133(1) cannot be taken to mean residents of a particular house. It means something wider, that is, the public at large or the residents of an entire locality. The very fact that the provision occurs in a Chapter with "Public Nuisance" is indicative of this aspect. It would, however, depend on the facts situation of each case and it would be hazardous to lay down any straitjacket formula.

12. Section 133 of the Code as noted above appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is a part of the heading "Public nuisance". The term



"nuisance" as used in law is not a term capable of exact definition and it has been pointed out in Halsbury's Laws of England that: "even in the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tour".

13. In *Vasant Manga Nikumba v. Baburao Bhikanna Naidu* (1995 Supp (4) SCC 54) it was observed that nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Sections 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The object and purpose behind Sections 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable danger would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisances and on the other hand applies when the nuisance is in existence. It has to be noted that sometimes there is confusion between Sections 133 and Sections 144 of the Code. While the latter is a more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute. [[See State of M.P. v. Kedia Leather & Liquor Ltd. and Ors.](#) (2003 (7) SCC 389)].



14. In the background of legal principles set out above, the judgment of the High Court does not suffer from any infirmity.

15. The residual question, however, is whether learned SDM could consider the suggestions, if any, given by the appellants, as to the manner in which goods can be stored or connected activities by passing order of a regulatory nature. This is permissible by the provisions itself which provide that SDM can regulate such activities. Therefore, without expressing any opinion on that matter for which material can be placed by the appellants before the learned SDM for appropriate orders in the matter, we direct that if any suggestion or alternative arrangement is brought to the notice of learned SDM it shall be considered in its proper perspective in accordance with law.

16. With the aforesaid observations, the appeal is dismissed.”

34. The aforesaid paragraphs of the Hon’ble Apex Court have been elaborately dealt with to show that while affirming the original order of the learned SDM, Sakoli and rejecting the view of learned Additional Sessions Judge, Gondia, the Hon’ble Apex Court nowhere observed that the learned Sessions Court at the first instance could not have entertained the criminal revision application.

35. Thanks to the efficient staffs of the Patna High Court Judges Library, this Court also got hold of an order of **Allahabad High Court in Dulichand vs Emperor** reported in



AIR 1929 Allahabad 833 in which it was held that the jurisdiction of the civil court is barred only when the order is conditional and not when the same is absolute.

36. The Allahabad High Court in the said case held as follows:

“Dr. Katju desired to induce the Court to interfere with a finding of fact of the Magistrate that a particular brick-kiln started by the applicant was a public nuisance in the place where it was started Reference was made to Bench ruling of this Court in the case of Behari Lal v. James Mac Lean Dean A.I.R. 1924 All. 392 to induce me to examine the evidence recorded by the Magistrate and pronounce independently whether the brick-kiln was a nuisance or not. The case cited was a case in second appeal where the provisions of law applicable are different from the provisions applicable to a revision under the Criminal Procedure Code. It was alleged that once the brick-kiln is stopped Duli Chand will have no remedy in the civil Court. If this were really the case I would have been prepared to inquire into the facts. Reference was made to para. 2, Section 133, Criminal P.C. That prevents the civil Court from questioning the order duly made by a Magistrate under



Section 133 which empowers the Magistrate to pass a conditional order. There is no such bar to the absolute order of a Magistrate being questioned in a civil Court. A similar clause does not appear in Section 140 which deals with an absolute order. The view I take of proceedings under Section 133 is that the procedure adopted by a Magistrate is more or less summary and his decision goes so far as to fix upon the party who must go to the civil Court to get a civil dispute decided. In the grounds of revision it was alleged that the provisions of Section 139-A were ignored by the Magistrate. This plea has been fully answered by the Additional Sessions Judge. Another case (one of the Lahore High Court) Gokal Chand v. Emperor [1920] 1 Lah. 163 quoted by the learned Counsel proceeded on entirely different grounds and did not lay down that a Court of revision should revise the finding of Magistrates regarding a certain building being a public nuisance. In my opinion no point of law arises here, and this application is dismissed.”

37. Further, the Hon’ble Apex Court in **Babulal Shivilal Upadhye & Anr. Vs. Dr. Yadav Atmaram Joshi & others** reported in **(1994) 1 Mah LJ 256** held as follows:

“3. It is of great significance to notice that



specific bar of the type specified in section 133(2) or of any other type against questioning in the Civil Court, an absolute order made under section 137 does not exist. Chapter X-B, Criminal Procedure Code is not the exclusive remedy in respect of public nuisance. Many questions pertaining to valuable and complicated civil rights of parties can arise which may not be appropriately determinable in these summary proceedings, object of which is only to advert imminent danger to public. Remedies are clearly available in respect of public nuisance also in Civil Law and at best remedies under Civil and Criminal Laws could be said to be concurrent as a result pursuit of one does not necessarily bar the other. Magistrate is supposed to be on guard against tendency to use summary jurisdiction as a substitute for setting private civil disputes by-passing the Civil Courts Civil Courts have jurisdiction to try suit of civil nature excepting those of which cognizance is barred express or implied. Such a bar is not to be readily inferred and the provisions creating bar have to be strictly construed.

4. Viewed in this light, it seems to me that the Criminal Procedure Code creates no bar against entertaining a suit in which validity



of an absolute order passed under section 137. Criminal Procedure Code, is challenged. The objects of conditional order and absolute order are quite different and they cannot be equated. The conclusion is, therefore, inevitable that the absolute order under section 137. Criminal Procedure Code, is challengeable in a Civil Court and the suit cannot be dismissed merely on the ground of want of jurisdiction. In the case of Dulichand vs. Emperor, AIR 1929 Allahabad 833, it has been held that the bar does not operate against an absolute order for removal of order public nuisance. I respectfully concur with the said view.”

38. From the aforesaid orders, it can be safely construed that Section 133(2) of the Cr.P.C. does not put any bar in challenging the absolute order of the learned SDM and the learned Additional Sessions Judge, VIIIth, Saran at Chapra rightly took up the Criminal Revision application.

39. Having clarified sub-section (2) of Section 133 Cr.P.C., so far as the facts of the case is/are concerned, it emerges that the learned Additional Sessions Judge, IVth had two reports before it submitted by the Circle Officer, Manjhi as also the Station Head Officer, Manjhi according to which:

(i) the SHO, Manjhi P.S. in its



report dated 26.06.2021 had recorded that with the consent of both the parties, from South to North, around two hundred feet long and ten feet wide passage was/were filled with soil/sand;

(ii) however, now the opposite party (petitioner herein) is trying to put blockade which may result into any untoward incident;

(iii) further, the Circle Officer, Manjhi too in its report dated 13.08.2021 stated that both the parties are agnates and they used common fund to make that passage;

(iv) importantly, it also held that the local public also uses that passage to visit Goddess 'Kali' temple;

(v) however, Dharamnath Mahto and Munshi Mahto (the petitioner herein) are hell-bent upon blocking the said passage and in the process, almost eight feet of the total ten feet wide road has been made



inaccessible for use.

40. After considering the aforesaid report, the learned Revisional Court held that:

(i) it is true that the Title Suit No.110/201/8 is pending before the court of learned Munsif, IVth, Saran at Chapra and both the parties will be bound by the final order passed in the said case;

(ii) however, for the present, considering the fact that the said passage is being used not only by the petitioner/opposite party no.4, it has become public passage which is/are being used by the public at large to visit the temple of Goddess 'Kali';

(iii) the SDM, Sadar, Chapra shall ensure removal of blockade.

41. It is worth nothing that the petitioner in the Title Suit No.110 of 2018 (for permanent injunction of the passage) had preferred application for temporary injunction against use of the passage which was rejected by the learned Munsif, Ist, Saran, Chapra on 16.11.2018 holding that indirect relief cannot



be granted which takes place of direct relief.

42. Having detailed out the facts leading to the passing of the order dated 02.12.2022 by the learned Additional Sessions Judge, VIIIth, Saran at Chapra in Cr. Revision No.105 of 2022 as also clarifying sub-section (2) of the Section 133 of the Cr.P.C. which in the considered view of the Court does not put any bar on the Revisional Court to take up the petition against the order passed by the learned S.D.M., there is no error in the order in question.

43. The petition lacks merit and is accordingly dismissed.

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.02.2023
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