

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25410 of 2015

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

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1. Mahesh Sah @ Ishu Sah and Ors. Son of Late Basudeo Sah
 2. Gorakh Sah Son of Mahesh Sah alias Ishu Sah,
 3. Doma Sah Son of Mahesh Sah alias Ishu Sah,
 4. Chhatho Devi wife of Dukhi Sah all are Resident of village- Ishara, P.S.-
Akorhi Gola , District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Somaru Sah Son of Late Bujhawan Sah Resident of village- Ishara, P.S.-
Akorhi Gola, District- Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bajarangi Lal, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

2 13-02-2023 Heard Mr. Bajarangi Lal, learned counsel for the
petitioners as also Mr. Jitendra Kumar Singh who represents the
State.

The petitioner has challenged the order dated
13.02.2015 passed by learned IIIrd Additional Sessions Judge,
Rohtas at Sasaram in Criminal Revision No.223 of 2013
Computer Reg. No.210 of 2013 where and whereby revision



application filed has been rejected affirming the order dated 10.04.2012 passed by the learned SDM, Sasaram in Misc. Case No.130(M) of 2004 under Section 147 Cr.P.C.

As per the prosecution story, the opposite party no.2, Somaru Sah preferred petition before the learned SDM, Dehri (Rohtas) alleging that in Plot No.555, the same is being used as a 'Rasta'/passage for decades by him/family members but has been blocked by the petitioners herein by putting bricks, sands and soil and thus there is imminent apprehension of breach of peace.

Accordingly, report was called for from the local police station and it submitted report stating that due to blockade of 'Rasta' by the petitioners herein, there is imminent apprehension of breach of peace of the spot and as such recommended initiation of proceeding under Section 147 of the Cr.P.C.

Upon notice, the other side appeared and after hearing the parties and the evidences on record as well as the report of the local police station, the SDM, Dehri vide an order dated 10.04.2012 in Misc. Case No.130(M) of 2004 declared the right of passage of the opposite party no.2 on the aforesaid plot no.555.



Being aggrieved, the petitioner chose to file Criminal Revision No.223 of 2013 before IIIrd Additional Sessions Judge, Rohtas at Sasaram.

A perusal of the said order dated 13.02.2015 of learned IIIrd Additional Sessions Judge, Rohtas would show that the opposite party appeared and made following submissions:

“04. The O.P. has filed written reply stating therein that the plot in dispute along with other plots 568 etc. is the ancestral and homestead land of both parties. The survey khatian is prepared in joint name of Ram Nandan Teli, grand father of O.P. No.2 and Basudeo Sah, father of petitioner Mahesh Sah, who constructed passage in the disputed land for their own use about 80 years ago and there is pucca house and land of this O.P. towards east of said passage in plot No. 568 and no other passage except disputed land. It is also contended that there was partition in between both parties and half half share, i.e. 2-2 fts, each are allotted in disputed land and this O.P. has made passage pucca by bricks. This O.P. has prayed for dismissing the revision.”

Taking into account the aforesaid facts the court



passed the following order vide an order dated 13.02.2015:

“08. It is well known that order passed U/s. 147 Cr.P.C. could be promulgated only when an Executive Magistrate is satisfied, from the report of a police officer or upon other information, that a dispute likely to cause a breach of peace exists regarding any alleged right of user of any land or water within his local jurisdiction. It is also found that the OP. No. 2 Somaru Sao filed petition before S.D.M. Dehri on which report was called for from police and A.S.I. Upendra Prasad Singh of Akorhigola P.S. Submitted his report on 28-02-2004 reporting there in that the disputed passage was allotted in partition which was made pucca by brick but the same was uprooted by the petitioner. On the basis of said report, the learned Court below on being satisfied and with applying his judicial mind, passed the order for initiating the proceeding Us, 147 Cr.PC. The basis of the initiation of order is found to be legal as per the provision of Sec. 147 Cr.PC. It is well settled principle that the competent authority has to apply his mind and exercise its discretion before issuing an order of restraint.

09 As discussed above, I find that the learned Court below has initiated the



proceeding U/s. 147 Cr.P.C. and passed impugned order by applying his judicial mind. There is no irregularity, illegality & impropriety found in the impugned order. Accordingly. I find that the revision has got no merit & the same is fit to be dismissed.

ORDER

10. The revision against the order dated 10-04-2012, passed by the learned Court below in Case No. 130 (M) of 2004, U/s. 147 Cr.P.C. is hereby dismissed. Let the copy of this order be sent to the concerned lower Court for needful.”

Aggrieved, the present petition.

Mr. Bajarangi Lal, learned counsel for the petitioners submit that the SDM, Dehri had no right to pass the said order when there was nothing on record/documents to support the case of the opposite party. He further cited a case of Patna High Court in **Deoki Lal vs. State of Bihar & Anr.** reported in **2008 (1) BCCR 420 (Pat)** to show that the learned SDM cannot turn itself into a civil court for determining the rights of the parties. He as such submits that the petition is fit to be allowed.

Per contra, learned APP submits that considering the statement that has come on record that the opposite party was using the passage for decades, the police report also support the



said theory, a categorical statement has been made which founds incorporated in the criminal revision itself that the passage was being used for 80 years, the same being land of the ancestors. Thus, no case is made out.

Having gone through the facts, the rival submissions and the order in question, this Court finds force in the submissions put forward by the learned APP.

So far as the decision cited by the petitioner in **Deoki Lal vs. State of Bihar & Anr.** (supra) is concerned, in that case there was report of the 'Amin' stating that no passage existed on the disputed land.

In this case, the report is entirely different inasmuch as the police submitted a report stating that the opposite party no.2 herein was using the said passage for decades. Thus, the said case cited by learned counsel for the petitioners do not come to their aid.

Having gone through the facts and circumstance of the case, in the considered view of this Court, there is no error in the order dated 13.02.2015 passed by the learned Sessions Judge.

The petition lacks merit, is accordingly dismissed.

Before parting, the court would like to observe that



the order passed by the learned SDM, Sasaram in Misc. Case No.130(M) of 2004 was based on the police report as well as facts submitted therein. In case, either of the parties move to civil court for title, obviously, the order of learned SDM will merge with the final outcome of the Title case.

(Rajiv Roy, J)

Prakash Narayan /-

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