

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41429 of 2015

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

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| <div style="display: flex; flex-direction: column; gap: 5px;"><div>1. Ramashish Mahto S/o Late Jubi Mahto</div><div>2. Umanath Mahto</div><div>3. Bishwanath Mahto</div><div>4. Dinesh Kumar
All Are Sons Of Ramashish Mahto</div><div>5. Ranjan Devi W/O Late Ram Babu Mahto
All Resident Of Village- Basdewpur Sarai, P.O.- Karnaul, P.S.- Sahebhanj,
District- Muzaffarpur</div></div> | <div>... .. Petitioner/s</div> <div>Versus</div> <div>1. The State Of Bihar</div> <div>2. Rajendra Mahto S/o Jageshwar Mahto, Resident of village- Basdewpur
Sarai, P.O.- Karnaul, P.S.- Sahebganj, District- Muzaffarpur.</div> <div>... .. Opposite Party/s</div> |
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Appearance :

For the Petitioner/s :	Mr. Sanjay Kumar @ S.K., Advocate
For the Opposite Party/s :	Smt. Anuradha Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 10-10-2023

The present petition under section 482 Cr.P.C. has been preferred by the petitioners impugning the order dated 02.04.2014 passed by the Ld. Additional Sessions Judge-III, Muzaffarpur in Criminal Revision No. 124 of 2012 wherein order dated 03.04.2012 passed by Ld. Executive Magistrate in criminal proceeding No. 1389 of 2005 (Tr. No. 115 of 2012) under Section 147 Cr.P.C. has been upheld.

2. Relevant facts, as emerging from the record, is that respondent no.2 herein Rajendra Mahto filed one application before Ld. Sub-Divisional Magistrate, Muzaffarpur West against all the petitioners herein for initiation of



proceeding under Section 147 Cr.P.C. and remove obstruction on road. It was averred in the petition that Respondent no.2 Rajendra Mahto has a house in Khesra No. 1591 (New Khesra No.1594) and to the west of his house, house of all the petitioners herein is situated and to the east of the house of the petitioners, the petitioners have *sahan* land and on this *sahan* land there is private *rasta* (way) measuring 10 feet wide x 43 feet long for about 50 years and this *rasta* is used by the Respondent no.2 to approach the main road for about 35 years. However, the petitioners have made cottage obstructing the *rasta* of the Respondent no.2.

3. In view of the aforesaid application, Ld. Sub-Divisional Magistrate initiated proceeding under Section 147 Cr.P.C. directing both the parties to put in written statement of their respective claims. After written statement of both the parties, evidence on behalf of both the parties was also recorded by Ld. Sub-Divisional Magistrate. After consideration of the material on record, Ld. Sub-Divisional Magistrate found that disputed land bearing Khata No. 164, new Khesra No. 1594, measuring 9 decimal belongs to the 2nd parties who are petitioners herein, but as per oral evidences of the witnesses, to the east of the house of the 2nd parties, who are petitioners



herein, over the land bearing new Khesra No. 1594, there is one *rasta* measuring 10feet wide x 43 feet long which is used by the first party, who is respondent no.2 herein, and others to approach main road. However, the same has been obstructed by the 2nd parties who are petitioners herein by constructing cottage and other work over it.

4. On the basis of the aforesaid finding, Ld. Sub-Divisional Magistrate has opined that giving 10 feet wide road on a private land does not appear to be just and proper. Hence, she declares only 5 feet wide *rasta* over the land in issue to be used as *rasta* by the first party (Respondent no.2 herein) and others and restrained the 2nd parties (Petitioners herein) from creating any obstruction. The order was also directed to be operative with immediate effect till it is set aside by competent Court.

5. Being aggrieved by the aforesaid order dated 03.04.2012 passed by Ld. Sub-Divisional Magistrate in Criminal Proceeding bearing No. 1389 of 2005, the 2nd parties (Petitioners herein) preferred Criminal Revision bearing No. 124 of 2012 before the Sessions Court, Muzaffarpur. However, the criminal revision was dismissed by Additional Sessions Judge-III, Muzaffarpur holding that there is no reason to interfere



in the order passed by the Ld. Sub-Divisional Magistrate.

6. It also transpires from the record that the petitioners herein, who are 2nd parties before Ld. Executive Magistrate have filed a Civil Suit on 02.05.2014 bearing Title Suit No. 513 of 2014 against the Respondent no.2 who was first party before the Ld. Sub-Divisional Magistrate for declaration of title and confirmation of possession, as well as for restraining the respondent no.2 from taking any forceful step over the land in question which is subject matter of criminal proceeding before the Ld. Sub-Divisional Magistrate. He has also filed interim application before Ld. Civil Court for interim injunction against the respondent no.2 herein. However, Court of Ld. Sub Judge-XI, Muzaffarpur vide order dated 04.11.2016 has dismissed their interim application for injunction.

7. Ld. counsel for the petitioners submits that the impugned order has been passed by Ld. Executive Magistrate without any jurisdiction because the pre-requisites for passing the impugned order are not fulfilled. He further submits that it is purely civil dispute between the parties. Civil suit is also pending in the competent Civil Court and the criminal proceeding before Ld. Executive Magistrate is not maintainable as it is an abuse of the process of court and liable to be quashed



under Section 482 Cr.P.C.

8. However, Ld. A.P.P. for the State and Ld. Counsel for the Respondent No.2 defend the impugned order submitting that there is no illegality or infirmity in the impugned order and as per the facts and circumstances of the case the impugned order has been passed by Ld. Executive Magistrate to maintain peace and tranquility.

9. However, before I proceed to consider the rival submission of the parties, it is imperative to know the ambit and scope of Section 147 Cr.P.C.

10. Section 147 Cr. P.C. reads as follows:-

*“147. Dispute concerning right of use of land or water-
(1) Whenever 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 the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statement of their respective claims.*

Explanation-The expression “land or water” has the meaning given to it in Sub-section (2) of Sec.14.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence, as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible decide whether such right exists and the provisions of Section 145 shall, as far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference



with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right;

Provided that no such order shall be made where the right is exercisable at all times, of the year, unless such right has been exercised within three months next before the receipt under Sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4) When in any proceeding commenced under Subsection (1) of Section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under Sub-section (1);

And when in any proceedings commenced under Subsection (1) the Magistrate finds that the dispute should be dealt with under Section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under Sub-section (1) of Section 145.”

11. Explaining the ambit and scope of Section 147

Cr. P.C., Hon’ble Orissa High Court in Biswanath Mohanty & Anr. Vs. Kailash Ch. Mohanty & Ors., (2013 SCC OnLine Ori 439) has observed in para 6 that Section 147 of the Code deals with apprehension of breach of peace when dispute is raised concerning rights of user of land or water. If the 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, he shall make an order in writing stating the



grounds of his satisfaction and shall direct the parties concerned in such dispute to attend his Court and put in written statements by the parties and the Executive Magistrate shall peruse the same, receive all such evidence as may be produced and then decide whether such right exists. In making such enquiry, the provisions of Sec. 145 of the Code as far as possible may be applied. If he would find that any such right exists, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right.

12. Hon'ble Orissa High Court further observed in same para that the power conferred on a Magistrate under this section is intended to preserve public peace and not to determine the right of parties like a Civil Court.

13. Hon'ble Himachal Pradesh High Court in **Balak Ram Vs. Rasik Singh & Ors. (2008 SCC OnLine HP 99)** held in para 12 that first the Magistrate has to satisfy himself either from the police report or upon other information and such satisfaction must be subjective, if there are good reasons for the Magistrate not being satisfied the satisfaction cannot be thrust upon him by any means. However, the Magistrate's satisfaction must be based upon some material placed before him and he is



under obligation to draw a formal order recording his satisfaction, or such material.

14. Hon'ble Himachal Pradesh High Court further held in para 13 of **Balak Ram** case (supra) that neither the Sub-Divisional Magistrate had recorded his subjective satisfaction nor there was any reference to the existence of the breach of peace which is *sine qua non*.

15. Hon'ble Jharkhand High Court in para 11 of **Maheshwar Pratap Singh Vs. The State of Jharkhand (2008 SCC OnLine Jhar 463)** has held that it is manifest from the above provisions that the Magistrate has only to decide as to whether such right of user does exist in favour of either of the parties claiming the right where claim is made by way of easement or otherwise, and whether such right has been used within three months next before the receipt of information leading to institution of the inquiry. The Magistrate is not called upon to decide the title of any party. From the impugned Order, it appears that neither the Magistrate nor the Revisional Court has taken into consideration the essential aspects required under Section 147 of the Cr.PC and on the other hand have-felt prompted to decide up in the title of the second party over the land in dispute on the basis of the sale deed.



16. Hon'ble Orissa High Court in para 7 of **Siba Prasad Moharana Vs. Dhadi Nayak & Ors., (2002 SCC OnLine Ori 185)** has held that proceeding under Section 147, Cr.P.C. can be initiated when a dispute exists with regard to any alleged right of user of any land which is likely to cause breach of peace. The powers conferred on a Magistrate in this Section is intended to preserve public peace and not to determine the right of parties like a Civil Court.

17. Hon'ble Madhya Pradesh High Court in **State of Madhya Pradesh Vs. Phodal Hira & Ors., (1970 SCC OnLine MP 44)** has observed in para 12 that under Section 147 the immediate right of user of any land or water as an easement or otherwise is decided. **Hon'ble High Court** further held in para 16 that an order under Section 147 of the Cr PC prohibiting the interference can only be made when the aggrieved party comes within 3 months or if the exercise is seasonal when the aggrieved party has exercised his right in the last season. The Magistrate has also to decide whether such a right exists in a summary manner. Under Section 147(1) the Magistrate has to receive evidence as may be produced by the parties, consider the effect of that evidence and take such further evidence as he thinks necessary and decide whether such a right



exists.

18. Hon'ble Gauhati High Court in para 8 of **Smt. Bhubaneswari Goswami Vs. Kaliram Burman (1959 SCC OnLine Gau 4)** explaining the ambit and scope of Section 147 has held that Section 147 Cr. P.C. deals with disputes regarding any alleged right of user on any land or water. **Hon'ble Gauhati High Court** further held in para 9 that if the right to use the land is claimed as an incident of ownership and it is alleged that a dispute has arisen as regards such user, it will really be a dispute relating to the land itself, and not in respect of a right in the land. The petitioner was claiming that the land belonged to him. He may have been using it in a particular manner, namely, by utilising it as a passage for the purpose of repairing his house. But there was no legal bar to his using it otherwise than as a passage. He could have, according to his claim, used the land in any manner he liked. So he was not really claiming merely a right of user in the land but a right of ownership, or in other words, it can be said that he was using the land as he was the owner of the land, and not in the exercise of any limited right of user.

19. Hon'ble Gauhati High Court further held in para 10 that the use of the word 'otherwise' only extends the



operation of the section to cases where a person may not have, strictly speaking, a right of easement, but he may acquire the right of user by grant or by custom. But nonetheless it has to be a right distinct from the use of the land as an owner. The cases where somebody trespasses on the land of others by making construction, may be covered by S. 145, Cr. P.C. The petitioner may in that case say that he has been in possession of the land as its owner and by making construction over the land, the other party has dispossessed him and if such an interference of the possession of the first party is likely to result in a breach of the peace, S. 145, Cr. P.C. will be attracted. Section 147 on the other hand will be available to a petitioner when he claims certain right of user in the land — a right different from that of ownership, over his own land.

20. Hon'ble Calcutta High Court in para 8 of **Sri Sukumar Das & Anr., Vs. Bholanath Shil & Anr. (2016 SCC OnLine Cal 10028)** held in para 10 that a proceeding under Section 147, Cr.P.C. relates to apprehension of breach of peace only in respect of dispute between the parties concerning to use of land or water. Executive Magistrate has been authorised to invoke jurisdiction under Section 147, Cr.P.C. only for the purpose of preventing breach of peace. In any way, learned



Magistrate has not been authorised under Section 147, Cr.P.C. to assume concurrent jurisdiction with competent civil Court for adjudication on the question of right, title, interest and possession over the land or water of the parties. As such, in the instant case, during pendency of civil suit between the parties and subsisting injunction order in the form of 'status quo' learned Magistrate erroneously passed restraining order with observation in favour of the petitioners approving their easement right over the disputed passage.

21. Hon'ble Calcutta High Court further held in para 11 that Section 147, Cr.P.C. does not provide any permanent relief in connection with property dispute between the parties to a lis. By that Section a Magistrate is not authorised for final adjudication over a dispute relating to property between the parties but competent civil Court is authorised to do so.

22. Hon'ble Patna High Court in Chhatradhari Choudhary Vs. The State of Bihar & Ors. (2015 SCC OnLine Pat 1644) has held that if the petitioner has a right of passage or right to utilize the passage he may approach before the Court of competent jurisdiction even individually or in representative capacity for declaration of public right.

23. Hon'ble Patna High Court in para 6 of



Ratichandra Mandal Vs. State of Bihar (2017 Cri. L.J. 3861) held that upon close scrutiny of Section 147 of the Code, it is easily discernible that if an Executive Magistrate is satisfied from the report of a Police Officer or upon other information that a dispute exists which is likely to cause breach of peace regarding any alleged right of user including the right of "easement", he can ask the parties concerned to such dispute to attend his Court and to put in written statements, on their respective claims. The mandatory requirement of initiation of a proceeding under Section 147 of the Code is of satisfaction of the Executive Magistrate of existence of a dispute likely to cause breach of peace with respect to the right of user of land within his local limits and of such satisfaction being recorded in writing.

24. Hon'ble Patna High Court further held in para 13 that it has to be kept in mind, however, that the purpose of conferring such power and jurisdiction upon Executive Magistrates, under Section 147 of the Code and other similar provisions, is only to prevent breach of peace and in a situation where he is satisfied that wrongful act of a person is likely to cause prejudice of peace, he may direct that person to desist from doing such act. Such orders are, undoubtedly, temporary in



nature till the rights of the parties are finally adjudicated upon by a competent court. The provisions are essentially not intended to confer any power on the Magistrates to decide disputes relating to respective rights of the parties.

25. Hon'ble Patna High Court in Guru Govind Singh Vs. State of Bihar (2017 Cri. L.J. 3307) has held in para 6 that a plain reading of the said provision makes it abundantly clear that before passing an order under Section 147 of the Code, it is mandatory for the Executive Magistrate to record his satisfaction that there exists a dispute, which is likely to cause a breach of peace regarding any alleged right of user of any land or water within his local jurisdiction. Unless such satisfaction is reached and recorded, the Magistrate cannot make an order under Section 147 of the Code. In most unambiguous terms, the Section provides that the Magistrate will be required to state the grounds of his being so satisfied that there exists a dispute likely to cause a breach of peace while making an order under Section 147 of the Code. No such satisfaction has been recorded by the Magistrate in the Impugned order. The impugned order, therefore, cannot be sustained being without jurisdiction.

26. Hon'ble Patna High Court further held in



para 8 that while making an order under Section 147 of the Code, the Executive Magistrate, in addition to recording his satisfaction as contemplated under sub-section (1) of Section 147 of the Code that there exists a dispute likely to cause breach of peace must also record that right of user has been exercised within a period of three months next before receipt of report of a police officer or other information leading to institution of the enquiry as contemplated under the proviso to sub-section (3) of Section 147 of the Code.

27. Hon'ble Jharkhand High Court in para 11 of **Supriya Sen & Ors. Vs. State of Jharkhand & Ors. (2013 Cri. L.J. 1750)** has held that in the application filed before the SDM, Sadar Ranchi for initiating a proceeding under Section 147 Cr.P.C., there does not seem to be any averment that the dispute with respect to same land (8' length $\times$ 36' width), which was there in between the parties, is likely to cause breach of peace nor such statement is there in the police report.

28. Hon'ble Jharkhand High Court further held in para 12 that under the circumstances, it can be said that no material was there before the Magistrate to come to the conclusion that the dispute was likely to cause breach of peace. Still the Magistrate in its order has recorded that the dispute is



likely to cause breach of peace between the parties and, therefore, that finding/observation is without any basis and, hence, order passed by the Magistrate initiating a proceeding under Section 147 Cr.P.C. seems to be quite bad.

29. Hon'ble Jharkhand High Court further held in para 13 that for initiating a proceeding under Section 147 Cr.P.C. following two essential ingredients should be there:-

(i) there should be a bonafide dispute regarding user of any land or water;

(ii) and that dispute is likely to cause breach of peace.

30. Hon'ble Calcutta High Court in para 7 of **Nitish Das & Ors. Vs. State of West Bengal & Anr. (2009 SCC OnLine Cal 1525)** has held that a plain reading of the aforesaid provisions makes it abundantly clear to assume jurisdiction under section 147 of the Code, the Executive Magistrate has to satisfy first either from police report or from any other information whether a dispute likely to cause a breach of peace regarding any alleged right of user of any land or water does exist or not and if he satisfies that a dispute is likely to cause a breach of peace do exist then in that case it is open to him to proceed further but before proceeding further it is



mandatory he may must record the grounds of his satisfaction. It is also the mandate of law that no prohibitory order can be made without first deciding the question about the existence of such right of user of a party over the disputed property.

31. Hon'ble Jharkhand High Court in Maheshwar Pratap Singh Vs. State of Jharkhand & Ors., [2008 CRI. L.J. (NOC) 814 (Jhar.)] has held in para 9 that it is manifest from the above provisions that the Magistrate has only to decide as to whether such right of user does exist in favour of either of the parties claiming the right where claim is made by way of easement or otherwise, and whether such right has been used within three months next before the receipt of information leading to institution of the inquiry. The Magistrate is not called upon to decide the title of any party. From the impugned Order, it appears that neither the Magistrate nor the Revisional Court has taken into consideration the essential aspects required under Section 147 of the Cr.PC and on the other hand have-felt prompted to decide up in the title of the second party over the land in dispute on the basis of the sale deed.

32. Hon'ble Patna High Court in para 6 of Md. Sarfuddin @ Sarfuddin Mian Vs. Sabir Thakur & Anr. (2005 SCC OnLine Pat 939) has observed that from a bare



reading of the proviso it is apparent that there is a vital interdict on the powers and the jurisdiction of the Magistrate and passing any final order under section 147 Cr. P.C. unless he be satisfied that within three months next of the report of the police officer, the right as alleged had been exercised. The proviso would open with the words “no such order shall be made”. This court in the judgment reported in A.I.R. 1955 Patna 265 relied upon by the petitioner would have noticed that where the right claimed is one which was exercisable at all times of the year, which is the case presently, it was the duty of the learned Magistrate to give a finding to the effect that this right was exercised within three months prior to the date when the learned Magistrate heard the grievances and took action on the allegation by directing an enquiry by the police. The court would have recorded simply that this would be mandatory requirement of law.

33. Hon’ble Delhi High Court in para 10 of **Ravinder Singh & Anr. Vs. Gian Chand Panwar & Anr. (2010 SCC OnLine Del 4212)** has held that it was not open for the respondent to initiate a parallel criminal proceeding before the SDM under Section 147 Cr.P.C. over the same issue claiming similar relief, after having filed a civil suit in this regard. Such proceedings would not be maintainable, inasmuch



as, it would result in multiplicity of proceedings. There was also possibility of these different forums taking conflicting view, regarding the same subject matter.

34. As such, it emerges from the statutory provisions of Section 147 Cr. P.C. and the case laws as referred to above, that Section 147 can be invoked by an Executive Magistrate subject to the following conditions:-

(a) There is a dispute between the parties regarding any alleged right of user of any land or water.

(b) The Executive Magistrate is satisfied as per police report or otherwise that such dispute is like to cause breach of peace. Such satisfaction must be recorded in writing based on stated grounds.

35. It also emerges that when proceeding under Section 147 Cr. P.C. is initiated by Executive Magistrate, he is required to conduct enquiry into the existence of alleged rights of the party by way of inviting written statements and evidence of the parties concerned. When it is found that such right exists regarding easement or otherwise, the Executive Magistrate is empowered to make order prohibiting any interference in the exercise of such right and an order for removal of any obstruction in the exercise of such right.



36. It also emerges that the jurisdiction under Section 147 is bestowed upon Executive Magistrate for maintaining public order and peace and the orders passed by the Executive Magistrate are temporary in nature and continue till the rights of the parties are adjudicated by competent Civil Court. When the Civil Court is seized of the matter, in regard to the same land or water, proceeding under Section 147 cannot be initiated by Executive Magistrate. The parties can agitate their claims before Civil Court for appropriate remedy including interim relief. If proceeding under Section 147 Cr.P.C. is pending before Executive Magistrate and subsequently any party moves Civil Court, in such situation also parallel proceeding before Executive Magistrate is not permissible because in such situation, proceeding before Executive Magistrate would be meaningless and unnecessary multiplicity of litigation. After all, orders of Civil Court are binding upon Executive Magistrates.

37. It further manifests that apprehension of breach of peace is *sine qua non* for invoking jurisdiction under Section 147 Cr. P.C. by Ld. Executive Magistrate. Maintaining public order and tranquility is subject matter of Chapter X of Cr. P.C. under which Section 147 falls. Concept of public order and



peace is much wider concept than instances of tension between few individuals arising out of private disputes between them in regard to landed property. Public order and peace affects public at large. If the effect of any dispute is confined merely to few individuals who are parties to the dispute, such dispute cannot give any apprehension of breach of public order and peace. Such private civil disputes comes within exclusive jurisdiction of Civil Court. Similarly violation of penal laws by few individuals are also beyond contemplation of Chapter X of Cr. P.C. Such violation at most be treated as law and order problem, but cannot be treated as basis for apprehension of breach of public order and peace. Concept of public order and peace is much wider concept than that of problem of law and order. Stray instances of violation of penal laws by few individuals are required to be dealt with under our legal framework by prosecution of such individuals in criminal Courts. All law and order problems cannot be treated as breach of public order and peace unless it affects the public at large, like riots, affray or public unrest. Extraordinary jurisdiction under Chapter X of the Cr. P.C. has been provided to Executive Magistrates to maintain public order and peace by nipping such breach in the bud. Hence, the Executive Magistrates are expected to invoke their



jurisdiction only in cases where there is apprehension of breach of public order and peace. They should refrain from exceeding their jurisdiction and encroach upon jurisdiction of civil and criminal Courts. Such colourable exercise of jurisdiction by Executive Magistrates would be against the object and spirit of Chapter X Cr. P.C. and it would render Civil and Criminal Courts redundant and the people would get harassed by illegal and unnecessary proceedings. In our legal framework, power and jurisdiction are defined for different instrumentalities of the state and no instrumentality is expected to exceed its jurisdiction and encroach upon that of others.

38. Coming to the case at hand, I find that the Respondent No.2 had approached the Executive Magistrate for initiating proceeding under Section 147 Cr.P.C. with application stating therein that over the land in question there is rasta for about 50 years and the same is being used by the Respondent No.2 for 35 years to approach main road and this land in question is landed property of the 2nd parties, who are petitioners herein, adjoining their house and as per allegation, the 2nd parties are creating obstruction to Respondent No.2 by putting cottage over the rasta. On his application, criminal proceeding under Section 147 Cr.P.C. was initiated by Ld. Executive



Magistrate and after perusal of written statements of their respective claims and evidence, it was found by Ld. Executive Magistrate that over the land in question there was one rasta measuring 10feet wide x 43 feet long which was used by first party, who is Respondent No.2 herein, and others to approach the main road. Hence, he declares 5feet wide x 43 feet long rasta over the land to be used by the first party (Respondent No.2 herein) and other. Obstruction was also directed to be removed if any.

39. It transpires from the aforesaid facts and circumstances that Ld. Executive Magistrate has not recorded any satisfaction regarding apprehension of breach of peace, nor is any material on record to show that any person other than the parties to the dispute are affected by the dispute. No public at large appear to be interested or affected in the dispute. On the basis of such facts and circumstances there was no occasion of any apprehension of breach of peace affecting public at large and there was no occasion for the Executive Magistrate to invoke such jurisdiction under Section 147 Cr.P.C.. The parties to the dispute had remedy to approach Civil Court in regard to their easementary or other rights. In fact the 2nd parties, who are petitioners herein, have already filed a civil suit on 02.05.2014



for declaration of their title and injunction against the first party (Respondent No.2 herein). In such situation, there is no propriety or justification for continuation of criminal proceeding before Executive Magistrate.

40. In view of the aforesaid facts and circumstances of the case, the order dated 02.04.2014 passed by Ld. Additional Sessions Judge-III, Muzaffarpur in Cr. Revision No. 124 of 2012 and order dated 03.04.2012 passed by Ld. Executive Magistrate in Cr. Proceeding No. 1389 of 2005 (Tr. No. 115 of 2012) are not sustainable in the eye of law, hence, same are accordingly quashed allowing the present petition.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
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