

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39768 of 2016

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

=====

Janak Bhagat son of Kulha Bhagat, resident of Village- Singda, P.S.- Motipur,
District- Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dukhit Sahni, son of Jagan Sahni, resident of Village- Jhingala, P.S.-
Motipur, District- Muzaffarpur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Advocate
For the O.P. No. 2	:	Mr. Pradeep Kumar Sinha, Advocate
		Ms. Punam Shrivastava, Advocate
For the State	:	Mr. Sri Surendra Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

9 21-11-2024 Heard Mr. Dhananjay Kumar, learned counsel for the

petitioner, Mr. Pradeep Kumar Sinha, learned counsel for the

O.P. No.2 and Mr. Sri Surendra Kumar, learned APP for the

State.

2. The instant criminal miscellaneous petition has
been filed for quashing the order dated 30.06.2016 passed in
Criminal Revision No. 64 of 2004 by the learned Additional
Sessions Judge-12th, Muzaffarpur, whereby and whereunder
the learned court below rejected the revision application
filed by the petitioner and confirmed the Order dated



01.10.2003 passed in the Case No. P356 of 1993 by the Executive Magistrate, Muzaffarpur (West) from which being aggrieved, the petitioner has filed this petition.

3. Mr. Dhananjay Kumar, learned counsel appearing for the petitioner submits that a preventive proceeding under Section 147 of the Cr.P.C. was initiated against both the parties in the court of Executive Magistrate, Muzaffarpur, in which the prayer of the O.P. No.2 was wrongly decided in his favour without taking into consideration the fact that the claim of the O.P. No.2 is based on his so-called esementary right for which a civil suit ought to have been filed by the O.P. No.2. It is further submitted that the provisions of Section 147 of Cr.P.C. clearly show that the Executive Magistrate has no right to decide the legal right of one and the preventive proceeding under the said section can be adopted only for some short period while the O.P. No.2 has attempted to establish his so-called easementary right by adopting a short cut method under Section 147 of the Cr. P.C. It is further submitted that the order dated 01.10.2003 passed by the Executive Magistrate was challenged by the petitioner before the revisional court by filing the criminal revision in which the said order of Executive Magistrate was wrongly affirmed without taking into account the merits of the case as



well as evidences of both the parties. Hence, the impugned order is liable to be set aside.

4. On the other hand, learned counsel appearing for the O.P. No.2 has opposed this petition and submitted that the learned Executive Magistrate has decided the dispute of passage which was running in between both the parties, under Section 147 of the Cr.P.C. by taking evidences of both the parties and the opposite party has been using the disputed passage for last five decades and there is no alternative way/passage to the O.P. No. 2 to reach his land and home and the petitioner obstructed his passage in wrong manner, so, the Executive Magistrate rightly started preventive proceeding under Section 147 of the Cr.P.C. and rightly passed the order dated 01.10.2003 and the same was rightly affirmed by the revisional court.

5. Heard both the sides and perused the impugned order dated 30.06.2016 passed by the learned Additional Sessions Judge-12th, Muzaffarpur in Criminal Revision No. 64 of 2004. Initially, in between both the parties the Executive Magistrate, Muzaffarpur initiated a proceeding under Section 147 of the Cr. P. C. on the application of O.P. No.2 and thereafter, the learned Executive Magistrate passed the order dated 01.10.2003 under Section 147 of the Cr. P. C.



directing the second party who is here the petitioner to remove the alleged obstruction from the alleged path (passages) and that order was passed after taking evidences of both the parties and the same was challenged before the Revisional Court. In the operative portion of the order impugned, the revisional court simply mentioned while rejecting the revision application that the learned court below (Executive Magistrate) adopted all the measures and further took into account the law of limitation except this no any finding regarding the propriety of the order of Executive Magistrate was given which shows that learned Additional Sessions Judge has not exercised its judicial mind in proper manner and passed the order in haste manner which is not in accordance with the sprit of revisional power. As such the order impugned is not tenable in the eye of law, so, it stands set aside and the revisional court is directed to pass a fresh order after examining the evidences of all the concerned parties which were adduced by them before the Executive Magistrate to find out the propriety of the order of Executive Magistrate within two months from the date of the receipt of this order's copy. In the result, the instant petition stands allowed.

6. It is clarified that the order passed by the Executive Magistrate shall remain in force till the decision of revisional



court regarding the propriety of the order of the Executive
Magistrate.

(Shailendra Singh, J)

Rajiv/-

U		T	
---	--	---	--

