

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1289 of 2019

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

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Jamal Waris Ansari Son of Late Abdul Gafoor Ansari, Resident of Village -
Chaukhandi, Ward No.30, P.O.- and P.S.- Sasaram, Distt.- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shyamji Prasad, Son of Late Narayan Ram Resident of Village - Brahman Toli, Ward No. 30, P.O. and P.S.- Sasaram, Distt.- Rohtas at Sasaram, Pin Code - 821115.
3. Dilip Kumar Son of Late Ramji Prasad Resident of Village - Brahman Toli, Ward No. 30, P.O. and P.S.- Sasaram, Distt.- Rohtas at Sasaram, Pin Code - 821115.
4. Deepak Kumar Son of late Ramji Prasad Resident of Village - Brahman Toli, Ward No. 30, P.O. and P.S.- Sasaram, Distt.- Rohtas at Sasaram, Pin Code - 821115.
5. Pradeep Kumar Son of Late Ramji Prasad Resident of Village - Brahman Toli, Ward No. 30, P.O. and P.S.- Sasaram, Distt.- Rohtas at Sasaram, Pin Code - 821115.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar Sinha No.1, Advocate
For the State	:	Mr. Md. Ataur Rahman, A.P.P.
For the O.P. No.2	:	Mr. Manish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 28-02-2024 Heard learned counsel for the petitioner and learned

Additional Public Prosecutor for the State as well as learned

advocate on behalf of the opposite party no.2.

2. The instant revision is directed against an order

dated 18.07.2019 passed by the learned Additional Sessions

Judge-8, Rohtas at Sasaram in Criminal Appeal No. 13 of

2018/C.I.S. No. 13 of 2018 whereby and whereunder the



learned Court of appeal was pleased to dismissed the appeal and affirmed an order dated 26.12.2017 passed by the learned Sub-Divisional Magistrate, Sasaram at Rohtas in Case No. 487 of 2017 in a proceeding under Section 107 of the Cr.P.C. directing the petitioner to furnish security bond of Rs.10,000/- for maintaining peace for a period of one year.

3. The factual aspect as disclosed from the record as well as submission made by the learned advocate for the petitioner is that on 17.08.2017 petitioner filed an application before the Superintendent of Police, Sasaram alleging inter-alia that the private opposite parties had been making certain construction encroaching some portion of public land within his own land. The Superintendent of Police send the application for submission of police report. The police report discloses such illegal construction undertaken by the opposite parties encroaching a portion of public land within the fold of their own land. Simultaneously, the petitioner made the same complaint to the Executive Officer, Sasaram Municipality with a prayer to restrain the opposite parties from raising such construction. The Executive Officer, Sasaram Municipality sent notice to the petitioner only. Petitioner duly appeared before the Executive Magistrate. Surprisingly enough he held that the petitioner has



constructed a house on his land violating the plan duly sanctioned by the Municipality. Therefore, he was directed to dismantle the portion of access construction on his land.

4. In the year 2018, the access construction was demolished by the Municipal Authority.

5. It is further case of the petitioner that without considering the police inquiry report which was submitted upon an application given to the Superintendent of Police, the Sub-Divisional Officer issued notice under Section 111 of the Cr.P.C. to both the parties and on 28.08.2017 drew up a proceeding under Section 107 of the Cr.P.C.

6. Petitioner filed reply to the said notice showing cause as to why he could not be bound by any order under Section 107 of the Cr.P.C. for public peace and good behavior. However, without directing any inquiry under Section 116 of the Cr.P.C. he passed an order against the petitioner directing him to execute a bond of Rs.10,000/- under Section 107 of the Cr.P.C. binding himself for one year.

7. Against the said order dated 26.12.2017, the petitioner preferred an appeal before the learned Additional Sessions Judge-8, Rohtas at Sasaram and the appeal was also dismissed holding inter-alia that that since there is an inquiry



report by the Municipality, no further inquiry under Section 116 of the Cr.P.C. is necessary and the petitioner was directed to file bond by dismissing the appeal and affirming the impugned order dated 26.12.2017 in the Case No.487 of 2017.

8. The learned advocate on behalf of the private opposite parties on the other hand submits that the petitioner has accepted the order dated 18.07.2019 passed in Criminal Appeal No.13 of 2019 by putting his signature in the order itself. Therefore, he cannot make any grievance before this Court.

9. The jurisdiction of the Revisional Court as described in Section 397(1) of the Cr.P.C. is to consider, legality, validity and propriety of any order, finding or sentence passed by any Court inferior to it. A party cannot be devoid from taking legal action against an order which in his opinion illegal, improper, without jurisdiction or passed in excess of jurisdiction by filing a revision only because his signature was taken on the order sheet.

10. It is needless to say that the police inquiry was directed to see as to whether the opposite parties make certain construction encroaching the public land, police found the allegation to be correct. The petitioner also made the same allegation before the Executive Officer, Sasaram Municipality.



The scope of the Executive Officer, Sasaram Municipality was to consider, if the opposite parties carried on any construction work encroaching the public land. On the contrary he inspected the construction of the petitioner and found some deviation with the sanction plan and it was demolished in 2018. However, till date the grievance of the petitioner was not addressed. The Appellate Court was absolutely wrong in holding that no inquiry as to the truth of information is required, specially when the police report discloses unauthorized construction by the opposite parties encroaching public land.

11. In view of the above discussion, I have no other alternative but to hold that the orders dated 26.12.2017 passed in Case No.487 of 2017 and the order dated 18.07.2019 passed by the learned Additional Sessions Judge-8, Rohtas at Sasaram in Criminal Appeal No. 13 of 2018 are without jurisdiction and liable to be quashed and set aside.

12. Accordingly, the instant revision is allowed.

13. Both the orders mentioned above, are quashed and set aside. Petitioner is at liberty to take recourse of law for redressal of his grievance regarding unauthorized construction made by the opposite parties encroaching public land.

14. It is made clear that this Court has not made any



inquiry by itself regarding unauthorized construction by the opposite parties. If any, such application is filed before the Sub-Divisional Officer, he is at liberty to consider the same independently, in accordance with law and without being influenced or swayed over the instant judgment passed by this Court.

(Bibek Chaudhuri, J)

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