

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42212 of 2019

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JAWAHAR SINGH Son of Ram Kishun Singh Resident of Village -
Maheshkhunt, Baboo Tola, P.S.- Maheshkhunt, District - Khagaria
... .. Petitioner

Versus

1. The State of Bihar
 2. Chhathoo Singh Son of Late Deep Narayan Singh Resident of Village
- Baboo Tola Maheshkhunt, P.S.- Maheshkhunt, District - Khagaria
... .. Opposite Party
- =====

Appearance :

For the Petitioner/s : Mr.Sushil Kumar Jha, Advocate
For the Opposite Party/s : Mr.Anand Kishore Choudhary, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 16-07-2026

Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

2. The present application has been filed against the
impugned order dated 04.05.2019 passed by learned Sessions
Judge, Khagaria in Cr. Rev. No. 34/2018, whereby and
whereunder learned Sessions Judge has been pleased to allow
the revision application filed by the O.P. No. 2 against the order
dated 13.03.2018 passed by learned Sub-Divisional Magistrate,
Gogari in Case No. 781(M)/2017, whereunder Circle Officer,
Gogari and S.H.O., Maheshkhunt P.S. has been directed to
remove the obstruction over path/*Rasta*. The Magistrate has
further been pleased to direct that if there is encroachment over
public land, the same be removed in the light of order passed in



C.W.J.C. No. 4309/2015 by the High Court on wrong and erroneous assumption of facts and laws as well.

3. The petitioner had filed a complaint to the Circle Officer, Gogari on 24.03.2017, stating therein that O.P. No. 2 is making obstruction over the Gair Mazarua Khesra No. 456, Tauzi No. 525, Mauza Maheshkhunt, which is only the path (*Rasta*) and thoroughfare of the petitioner.

4. It is submitted by learned counsel appearing for the petitioner that on the basis of aforesaid written complaint, the Circle Officer, sought for a report on the same day from Halka Karamchari, through Circle Inspector in terms of Annexure '1' whereafter, on the basis of spot enquiry, the Halka Karamchari and the Circle Inspector jointly reported vide report dated 28.03.2017 that the land in question is "Gair Mazarua Khas" being obstructed by the O.P. No. 2, who is claiming that his right over the land in question is to purposefully obstruct the path (*rasta*).

5. It is further submitted that O.P. No. 2 has obstructed the road of the petitioner whereupon the Circle Officer has been pleased to communicate the matter to the S.H.O. and open the record of encroachment. It is submitted that office order as contained in letter no. 522 dated 30.03.2017 has been issued



under the signature of Circle Officer enclosing the report dated 28.03.2017 (Annexure '3'), whereby the S.H.O. Gogari has been requested to take appropriate action according to the report.

6. It is submitted that on the basis of aforesaid, the Circle Officer has also initiated the proceeding for removal of encroachment and accordingly, issued notices to both the parties vide notice dated 10.06.2017, 22.06.2017 and 28.07.2017, which became futile. Ultimately, the Circle Officer recommended to the learned S.D.M. for initiation of proceeding under section 133 of the Cr.P.C. vide letter No. 1343 dated 12.09.2017, wherein the order was passed on 13.03.2018 directing to remove the obstruction and if it found that there is any encroachment on public land, same be removed immediately also with a direction to put up the record on 25.04.2018 for further proceeding.

7. In the background of all such developments, the legal issue, which was raised by learned counsel for the petitioner is that the order, which was challenged by O.P. No. 2 before the court of learned Sessions Judge, Khagaria by way of Criminal Revision, wherein the order dated 13.03.2018 as passed by S.D.M., Gogari was set-aside, taking note of the fact that no



evidence, as required under section 138 of the Cr.P.C., was taken during the proceeding. The order passed under Cr. Rev. No. 34 of 2018 dated 04.05.2019 as passed by learned Sessions Judge, Khagaria is bad in the eyes of law as filing of any criminal revision against the interlocutory order is barred under Section 397(2) of the Cr.P.C.

8. At this stage, it would be apposite to reproduce the provision of Section 397(2) of the Cr.P.C., which reads as under:

“397(2). The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

9. It would further be apposite to reproduce **para 102** of the legal report of Hon’ble Supreme Court as available through **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]**, which are as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute



any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. On perusal of the record, it transpires that order dated 13.03.2018 appears interim in nature as it not appears conclude the proceeding finally, as the next date of hearing was



fixed for 25.05.2018.

11. Considering aforesaid, the revision as preferred against the aforesaid order, in furtherance of which the impugned order was passed by the learned Sessions Judge, Khagaria is bad in the eyes of law in view of the provision as available under section 397(2) of the Cr.P.C. as same appears legally barred in terms of “principle no. 6” as laid down in **Bhajan Lal’s case (supra)**, the impugned order as passed by learned District Judge, Khagaria is hereby quashed/set-aside.

12. Accordingly, this application stands allowed.

13. The parties are free to join the pending proceedings of Case no. 781(M)/2017 before S.D.M., Gogari, District – Khagaria, if so required.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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