

**(2016) 11 PAT CK 0027**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 15735 of 2013 (Arising Out of PS.Case No. null Year-null Thana-null District-Gopalganj)

Farhat Abbas

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 15-11-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 133, Section 482

**Citation :** (2017) 1 ECRC 259

**Hon'ble Judges :** Mr. Rakesh Kumar, J.

**Bench :** Single Bench

**Advocate :** Mr. Akhileshwar Kumar Shrivastava, Advocate, for the Petitioners; Mr. Ritesh Kumar and Sri Chandrasen Prasad Singh, Advocates, for the Opposite Parties

**Final Decision :** Partly Allowed

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## Judgement

Mr. Rakesh Kumar, J.(Oral) - Heard Sri Akhileshwar Kumar Shrivastava, learned counsel for the petitioner, Sri Chandrasen Prasad Singh, learned Additional Public Prosecutor as well as Sri Ritesh Kumar, learned counsel who has appeared on behalf of the opposite party no. 2.

2. The petitioner, has approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to quash entire proceeding in Case No. M/ 2742 of 2012 pending before the learned Sub Divisional Officer, Gopalganj. The said proceeding has been initiated under Section 133 of the Cr.P.C. on complaint made by the opposite party no. 2 making an allegation that the petitioner had constructed a Chhajja over his window which has obstructed the light and air of opposite party no. 2. Even it has overlapped the land of the complainant. The petitioner in this case has also prayed for quashing of the order dated 27.11.2012 passed by learned Sub Divisional Officer, Gopalganj, whereby, he had permitted the opposite party no. 2 herein to implead the person in whose favour the premises was gifted, who was none else

but the wife of the petitioner.

3. The present petition was filed on 9.4.2013. During pendency of this petition it appears that the learned Sub Divisional Officer vide its order dated 13.3.2013 which has been brought on record through supplementary affidavit filed by the petitioner as Annexure -"4", had directed for demolition of the said Chhajja. After the said order the petitioner filed a supplementary affidavit with a prayer to also quash an order dated 13.3.2013. A bench of this Court vide order dated 30.4.2013 while directing for issuance of notice to the opposite party no. 2 stayed the operation of order dated 13.3.2013 passed in Case No. 2742 (M) of 2012 by the Sub Divisional Magistrate.

4. It was submitted by learned counsel for the petitioner that proceeding under Section 133 of the Cr.P.C. in respect of dispute which has been raised by the opposite party no. 2 is not at all maintainable and he has filed show cause before the learned Sub Divisional Magistrate raising objection on the point of maintainability and even during pendency of the said application the learned Sub Divisional Magistrate has permitted the opposite party no. 2 to implead the wife of the petitioner in whose favour the petitioner had executed the deed of gift. He submits that it was a private dispute which was not required to be settled while exercising power under Section 133 of the Cr.P.C. According to learned counsel for the petitioner the entire proceeding is required to be set aside. Whereas, Sri Ritesh Kumar, learned counsel appearing on behalf of the opposite party no. 2 submits that the proceeding has been initiated since a Bench of this court in C.W.J.C. No. 2855 of 2012 on 9.8.2012 had issued direction to the Sub Divisional Officer, Gopalganj to decide the matter within a specified time and only thereafter the learned Sub Divisional Officer proceeded with the case. He has further raised objection on the point of maintainability of the present petition. He submits that in any event the building in question is not in the name of the petitioner. The petitioner had already executed a deed of gift in favour of his wife and as such in this case instead of petitioner the wife of the petitioner was required to raise any objection. He further submits that on the date of filing of this petition no final order was passed by the learned Sub Divisional Magistrate and only an interim order was passed whereby rightly the learned Sub Divisional Magistrate has permitted the opposite party no. 2 (Applicant before the Court below) to implead wife of the petitioner as relevant party. He further submits that had there been any final order the petitioner would have been advised to approach the learned District Judge instead of approaching this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure. However after hearing the parties and considering the facts particularly on perusing the order dated 13.3.2013 whereby demolition order was passed the Court is of the opinion that the order appears to be not appropriate since on 13.3.2013 itself the learned Sub Divisional Magistrate had initially noticed regarding appearance of first party and noticing the application regarding postponement of the proceeding and later on, on the same date he has passed final order. Learned counsel for the petitioner has alleged that after learned Sub

Divisional Officer was transferred by antedating order of demolition was passed .

5. Besides hearing learned counsel for the parties I have perused the materials available on record. After going through the order dated 13.3.2013 and examining the materials available on record the Court is of the opinion that the order of demolition i.e. order dated 13.3.2013 passed by learned Sub Divisional Magistrate is required to be interfered with and accordingly same is hereby set aside. Since the petitioner has already filed his objection petition before the learned Sub Divisional Magistrate and no final order was passed on his objection, instead of passing final order the Court proposes to remit back the matter to the court of learned Sub Divisional Officer to examine the objection of the petitioner or if any further show cause is filed by the wife of the petitioner he may examine the same and pass appropriate order in accordance with law. The Court expects that the learned Sub Divisional Officer may pass appropriate order preferably within a period of three months from the date of receipt/production of a copy of this order.

6. The petition stands partly allowed.