
(1936) 03 PAT CK 0006
In the Patna High Court

Mahabir Prasad Chaudhuri and Another APPELLANT
Vs
Dhanushdhari Prasad Singh and Others RESPONDENT

Date of Decision : 23-03-1936

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 139

Citation : AIR 1936 Patna 409

Hon'ble Judges : Macpherson, J

Bench : Division Bench

Judgement

Macpherson, J.—A petition by the pleaders advocates and others resident in Mahalla Chondi in Barh town filed on 28th August last made mention of a public well under the control of the Municipality, which is used by the petitioners and many others of the locality for drinking and house-hold purposes and of a latrine made adjoining it by these petitioners in their house and asserted

that the service-door of the privy facing east is situated at a distance of one cubit only from the platform of the wall and the filthy water of the privy is drained over the platform of the well and a foul smell is felt by persons who go to draw water for drinking and other purposes, and if the privy be allowed to continue the water of the well will be polluted and will be quite insanitary and unfit for use and hence the removal of the same is urgently necessary.

2. The well adjoins the east of the petitioner's house and the privy is just to the north-west of the well while immediately to the north of the well and east of the privy there is an extension of the petitioners' land on which there is a service room 4'--4" + 5" and a walled but not covered passage to the service room 4'-4"x8"-6". North of the three erections which are in line are an earthen drain and the passage to the girls' school. The Subdivisional Magistrate issued notice u/s 133 in which he speaks of the petitioners' latrine adjoining which there is a well, the water of which the public drink and states there is danger of injury to the health of the public and directs them to remove the latrine (paikhana) or show cause. They appeared in accordance with the order and showed cause, and

also applied for appointment of jury to try whether the order was reasonable or proper. The Magistrate pointed out that the cause shown was irrelevant and appointed a jury and the petitioners accepted the order and presented their case to the jury. The jury held that the order should be made absolute. It is now urged that the order absolute is vitiated because the Magistrate made no inquiry u/s 139, Criminal P.C. But the circumstances were such that no inquiry was feasible since there was no denial of the existence of the public right in the well and the atmosphere surrounding it. The only other point is whether Section 133 is applicable. Clearly the Magistrate thought that the nuisance mentioned should be removed from the public place, that is the well. That is sufficient, altogether apart from the general nuisance on the Bandh Road and the Bowstead Road adjoining. In my judgment there is no ground for interfering with the order of the Magistrate. The rule is discharged.

3. I may, however, mention that while the paikhana as at present situated must be removed, the petitioners are entitled to use their premises not only for any normal purpose but also as a paikhana provided that by the use of engineering or sanitary skill or special expenditure it does not constitute a nuisance to the public places adjoining.