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**(1927) 05 PAT CK 0004**  
**In the Patna High Court**

Musaheb Soudagar and Others

APPELLANT

Vs

Nidhi Ram Dutt

RESPONDENT

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**Date of Decision :** 10-05-1927

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 107, 107(3)

**Citation :** AIR 1927 Patna 314

**Hon'ble Judges :** Sen, J

**Bench :** Division Bench

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**Judgement**

Sen, J.—In this case petitioners 1 and 3 claim that they have taken settlement of certain jungle land for a period of seven years from the Raja of Bagmandi. Petitioner 2 is the son of petitioner 1 and petitioners 4 and 5 are servants. The opposite party, who is the brother-in-law, of petitioner 3, claims that he has taken a private settlement from the petitioner, the second party, of one ghat, namely Naktitanr. Each side contends-that it is in possession of the ghat in question. It appears that there has been a series of proceedings in respect of this disputed ghat between the parties concerned. The final proceedings out of which this application arises was drawn up u/s 107, Criminal P.C, on the 14th February 1927. The petitioners were, ordered to show cause, and, on the 13th, March 1927, the order which is complained against was passed u/s 107, Clause 3, Criminal P.C., binding down the petitioners.

2. The learned Counsel for the petitioners urges that, in the circumstances of this case, no such order should have been passed against only one of the parties, and that the order is illegal, and unjustifiable, and calculated to interfere with the petitioners' right. On the other hand the learned vakil for the opposite party contends that, inasmuch as the Court below has proceeded upon his own opinion that the opposite party were in possession of the ghat the order is perfectly justifiable.

3. It has been laid down in many cases that, where there is a right put forward by both the parties and where the right is in dispute, it is not fair to bind down

only one of the parties. If the Magistrate thinks that, in the interests of public peace, he should resort to the provisions of Section 107 the proceedings should be drawn up against both parties so as not to give unfair advantage to one as against the others.

Reliance is placed upon the decisions in *Driver. Queen-Empress* [1898] 25 Cal. 798, *Dindayal Mozumdar v. Emperor* [1907] 34 Cal. 935, *Baisnab Das Babaji v. Emperor* [1908] 12 C.W.N. 606 and *Ghasi Ram v. Emperor* [1919] P.H.C.C. 98 All these cases lay down the principle above referred to.

4. In view of these rulings, perhaps, it would have been better if proceedings had been drawn up against both the parties, but, as matters stand, proceedings have been drawn up only against petitioners on the ground that the Magistrate is of opinion that the opposite party is in possession.

5. It also appears from the explanation that, after the proceedings were so drawn up, the petitioner attempted, notwithstanding the proceedings pending, to collect tolls in exercise of his alleged possession.

6. The rule granted is restricted only to the order passed u/s 107, Sub-section (3).

7. In view of the circumstances disclosed in the petition, as well as in the explanation above-mentioned, I do not feel inclined to interfere with the order passed, as it will inevitably lead to a disturbance of peace. If the Magistrate thinks that he should take proceedings against the other side also he will certainly do so.

8. The application is rejected.