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**(1950) 02 PAT CK 0024**  
**In the Patna High Court**  
**Case No : Criminal Revision 1609 of 1949**

Panchan J. Rathore

APPELLANT

Vs

Mohan Mogha

RESPONDENT

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**Date of Decision :** 01-02-1950

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 133, 147

**Citation :** AIR 1950 Patna 315

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

**Bench :** Single Bench

**Advocate :** M.K. Mukharji, for the Appellant; S.K. Sarkar, for S.C. Mazumdar, for the Respondent

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## Judgement

Das, J.—The principal point for consideration on this application is if a proceeding u/s 147, Criminal P. C., started by the learned Sub-divisional Magistrate of Dhanbad on 16th September 1949, is with jurisdiction or not. The facts are these. On a Police report, dated 24th August 1949, relating to the fencing and digging of ditches on a path, alleged to be a public path between two collieries, regarding which there was an apprehension of a breach of the peace, the learned Sub-divisional Magistrate directed the issue of a conditional order u/s 133, Criminal P. C. This was on 26th of August 1949. The order stated that either the obstructions should be removed or cause should be shown by 16th of September-1949. On 16th September 1949, the Magistrate, who was on that date acting as the Sub-divisional Magistrate, heard the parties and perused the cause shown. After hearing the parties and perusing the cause shown, he was satisfied that the dispute really related to an alleged right of user of a particular piece of land, and inasmuch as there was an apprehension of a breach of the peace, he directed the drawing up of a proceeding u/s 147, Criminal P. C. On the next date the parties filed written statements, and the case was transferred to Mr. G.P. Varma. Subsequently, the case was transferred to another Magistrate on the transfer of G.P. Varma.

2. The question before me is if the order of the learned Magistrate acting as the Sub-divisional Magistrate on 16th of September 1949 and directing the initiation of a proceeding u/s 147, Criminal P. C. is an order with jurisdiction. It is not disputed that the Magistrate who passed the order on that date, was a Magistrate of the first class, and that he was acting as the Sub-divisional Magistrate on that date. The point which is urged on behalf of the petitioner is that a proceeding u/s 133 once started must be brought to termination, and that without terminating that proceeding, it was not open to the Magistrate to start a proceeding u/s 147, Criminal P. C. It seems to me that there is now no proceeding u/s 133, Criminal P. C. The learned Magistrate, on hearing the parties and on perusing the cause shown, was satisfied that the section which would properly apply in the present case was Section 147 of the Code. In my opinion, the learned Magistrate was right in that view. I have myself examined the cause shown and the written statements filed. It appears that the opposite party before me claimed not merely that the land in question was a public path over which every member of the public had a right to access; but also claimed that the opposite party had a right of easement over this land--an easement of necessity there being no other way by which the opposite party could transport coal from its colliery. It seems, therefore, that the real dispute between the parties relates to an alleged right of user of the land in question, That being so, the learned Magistrate was right in his view that Section 147 was the proper section, particularly when the police report showed, and the learned Magistrate was so satisfied, that there was an apprehension of a breach of the peace over the dispute regarding the alleged right of user. The learned Magistrate had, in my opinion, jurisdiction to start a proceeding u/s 147, Criminal P. C., on the materials, before him. Learned counsel for the petitioner had relied on two decisions. The first is *Sarojbashini Devi v. Sripati Charan* 42 Cal. 702: A. I. R. 1916 Cal. 151. That was a case in which the learned Magistrate allowed a proceeding under a. 133 to drop without following the procedure prescribed by Section 137 (1). The facts of that case are entirely different and the principle laid down in that decision has no application to the facts of the present case. The other decision is *Abdool Rackman Mia Vs. Safar Ali*, . That was a case in which in a proceeding u/s 133, Criminal P. C., an order was passed u/s 147, Criminal P. C., without taking any action in accordance with the procedure laid down in Section 145, Criminal P. C. It appears that the learned Magistrate in that case passed an order u/s 147 in a proceeding u/s 133, Criminal P. C. without taking any evidence. It is obvious that no order u/s 147, Criminal P. C. can be passed without first initiating proceeding under that section and following the procedure laid down therein. In the case before me, the learned Magistrate had jurisdiction to start a proceeding u/s 147, Criminal P. C. and he passed an order directing the filing of written statements, etc. In other words, he followed the procedure which has to be followed in a proceeding u/s 147, Criminal P. C. In my opinion the order of the learned Magistrate dated 16th September 1949 is an order with jurisdiction.

3. The result, therefore, is that the application fails, and the rule is discharged.