
(2018) 03 GAU CK 0110
In the Gauhati High Court
Case No : Crl. Petition No. 453 of 2016

Raja Chamuah

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107, 133

Citation : (2018) 03 GAU CK 0110

Hon'ble Judges : RUMI KUMARI PHUKAN

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This criminal petition has been preferred by the petitioner/1st party Raja Chamuah against the judgment and order dated 14.03.2016 passed by the learned Sessions Judge ,Lakhimpur in Crl. Revision No. 26(4)2016 where by the learned Judge affirmed the judgment and order dated 12.10.2015 passed by the learned Sub-Divisional Magistrate , Dhakuakhana in Case No. 2/2015 u/s 107 Cr.P.C. refusing to proceed with the case under section 133 Cr. P.C. and asked the parties to maintain peace and tranquility in the locality.
2. The material facts, which have led to the making of the present criminal petition may be set out as follows-
3. A proceeding was drawn up under section 107 Cr.P.C. by the Sub-Divisional Magistrate, Dhakuakhana on the basis of a police report received from Dhakuakhana P.S. in connection with one Non-FIR case No.01/2015 wherein complain was filed by the present petitioner Raja Chamuah apprehending the breach of peace in their locality as, the dispute arises regarding the closure of a road on 03.01.2015 by Sri Lakhya Chamuah,

Kaushal Chamuah and Dipak Chamuah (respondent herein). As per the police report the disputed land had been using by the petitioner and three/four

other families of that locality as a road prior to 03.01.2015 and on 03.01.2015 the opposites parties have closed the road and thereby creating

obstruction to the petitioner and other three/four families and there was apprehension of breach of peace in the locality and submitted to draw up a

proceeding under section 107 Cr.P.C. Thereafter on 13.01.2015 some persons namely Rohini Chamuah, Bijoy Chamuah both sons of Lekhan

Chamuah, Pinku Chamuah and Gyandeep Chamuah both sons of Snjib Chamuah submitted a complain before the Deputy Commissioner, Lakhimpur

alleging about the closure of the said road by Lakhya Chamuah, Kaushal Chamuah and Dipak Chamuah and prayed to draw up a proceeding under

section 133 Cr.P.C. and the same was endorsed to the Sub-Divisional Officer ,Dhakuakhana for taking necessary steps.

4. Accordingly, notice was issued to both the parties and recorded the evidence of witnesses. The first party examined three witnesses and the

opposite party also examined four witnesses. After hearing both the sides, the learned SDM, Dhakuakhana comes to the findings that the D/L is a

private land as per land record, which is situated on a part of land covered by Dag No.305 of PP No.46 of Ghatapara map under Machkhowa Mouza,

as such the section 133 Cr.P.C. is not applicable and asked the parties to maintain peace and tranquility in the locality under section 107 Cr.P.C. vide

order dated 12.10.2015 in case No. 2/2015.

5. Being aggrieved and dissatisfied with the order of the learned SDM, Dhakuakhana , the present petitioner preferred a revision before the learned

Sessions Judge, Lakhimpur which was also dismissed by order dated 14.03.2016 Now the present petition has been preferred challenging the findings

of the Ld. revisional court dated 14.03.2016 in criminal petition No. 26(4) 2016.

6. I have heard argument of learned counsel for petitioner and the learned counsel for the state but none appears for the respondents.

7. During the course of hearing learned counsel for the petitioner Mr. P. Buragohain has contended that the learned court below committed great

irregularity/illegality in passing the impugned order dated 14.03.2016 both the facts and as well as in law and as such the same is bad in law and liable

to be quashed and set aside.

8. On the next it is contended that the public road in question come into existence in the year of 1971 and it is established fact that the same road being used by the local community at large including both the parties. The learned counsel for the petitioner has submitted that the impugned order passed by the court below is absolutely illegal and cannot be sustained in the eye of law. It is also submitted that the report submitted by the police indicates the land in question was being used as a public way and as such there was no occasion for rejecting the application under section 133 CrPC. Moreover, existence of the alternative road is not bar for not removing the public nuisance. Further it contends only because the road is not shown in the official document as a public road in the municipal records, it shall make not any difference, in as much as it has been found that the road is being used by the people of the locality for which the same has acquired a public character, even if it is not the public road the same cannot be obstructed by the opposite party.

9. Heard Mr. Kalita , learned Addl. P.P. for the state/respondent according to him the order passed by the court calls for no interference as it is a well reasoned order appreciating the oral as well as documentary evidence.

10. From perusal of the impugned order it appears that the both the parties adduced evidence in support of the respective claims and it emerges from the matters on record that the land in question was used as a path prior to the construction of new road in 2012-2013 under the MNREGA Scheme by the Panchyat and Rural Development Department . The learned SDM,Dhakuakhana also observed the disputed land is a private land as per Land Record i.e. Jamabandi and Chitha and a part of the land covered by Dag No.305 of P P No.46 of Ghatapara .under Machkhowa mouza.

11. From the evidence it also appears that the road in question was constructed by the 2nd party on their land to go to their paddy field which was also used by the 1st party and other four families but they are not parties to the complain submitted by the 1st party. As appears from the evidence of P.W.2 who is one of the complainant and the father of the P.W.1, that there is no existence of the disputed road in the old map. From the evidence of P.W.1 it is found that they have alternate road to their residence and the 2nd party have sacrificed some land for construction of the new road and all the five families can use the new road for their ingress and egress.

12. D.W. 2 Dipak Chamua who is one of the opposite party of the proceeding also not denied about the existence of the old road. But as per his

version as they have sacrificed some land for the new road for which land is reduced hence they have closed the old road.

13. In the backdrop of the facts, it is to be seen whether the petitioner has the right of way on the disputed road in question and whether a proceeding under section 133 Cr.P.C. is tenable /maintainable in the eye of law.

14. Let us reproduce some relevant portion of the order of the learned Trial Court as below: "The D/L (i.e is the disputed land) is a private land as

per the land record (i.e Jammabandi and Chitha) as per the land record the disputed land is situated on a part of the land covered by 305 of periodic

Patta No. 46 of Ghatapara Map under Machkhawa Mouza, which reveals Section 133 CrPC is not applicable in this proceeding. Hence the case is to

be prosecuted under section 107 CrPC and as per the police report, it is found that there was apprehension of breach of peace in the locality.

"It reveals from the statement of the witnesses or prosecution side that the road was used by the 1st party as well as the

2nd party also. The alternate i.e the road new road was constructed in the year 2012-13 under MGNREGA by the Panchayat and Rural Development

and after construction of the new road the disputed land has been closed by the 2nd party resulting problem to the 1st party. On the other hand, from

the statement of the defence side it is found that disputed road is constructed by the 2nd party on private land belong to the 2nd party to go to their

paddy field, from the construction of the disputed road, the 2nd party made it free to use for all till 03.01.2015. But after 3 years opening the

alternative road which is very suitable for the 1st party, the disputed road was closed by the 2nd party." The section 133 Cr.P.C. reads as follows-

"Section 133. Conditional order for removal of nuisance-(1) Whenever a District Magistrate or Sub-divisional Magistrate or any other Executive

specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such

evidence(if any)as he thinks fit, considers-

(a)that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully

used by public; or

only the provision of section 107 CrPC is applicable in the facts situation.

18. Consequently I find no any illegality and or irregularity in the impugned order passed by the revisional court which has upheld the order of the court

below. I find no any merit in the application and same is accordingly dismissed.

19. Return the LCR along with a copy of this judgment to the court below.