

**(2006) 05 PAT CK 0019**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 13911 of 2004

Sheo Ratan Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision :** 18-05-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 133

**Citation :** (2006) 3 PLJR 137

**Hon'ble Judges :** Chandramauli Kr. Prasad, J

**Bench :** Single Bench

**Advocate :** Sanjeev Kumar, for the Appellant; Ashutosh Kumar, for O.P. No. 4, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Chandramauli Kr. Prasad, J.—On the basis of a report given by the Circle Officer, Majhouli, the Sub Divisional Magistrate, Bettiah passed conditional order requiring the 2nd party to remove obstruction from a public road. The 2nd party, objected to it and denied the existence of any such road or obstruction. After giving opportunity of hearing to both the party, the learned Magistrate, by order dated 23.6.2003 passed in Case No. 1055-M/2002, directed the 2nd party to remove the obstruction within fifteen days, failing which it was directed that the obstruction shall be removed forcefully. The 2nd party, aggrieved by the same, preferred Cr.Revision No. 160 of 2003, and the 5th Additional Sessions Judge, West Champaran, Bettiah, by order dated 31st of January, 2004, allowed the revision application and set aside the order of the learned Magistrate.

2. The Ist party, aggrieved by the same, has preferred this application.

3. The Ist party, petitioner herein, filed a petition in the court of the Sub Divisional Magistrate, West Champaran, Bettiah, inter alia, alleging that in Village Uttim, Tola Bhagarwa, there is a public road which connects the road on the southern and northern side of the village and used by general public. It is alleged

that the 2nd party encroached upon the public road along with some portion of his Sehan land and illegally erected straw (phoos) hut and made other constructions blocking the approach road. On receipt of the aforesaid application, the learned Magistrate, called for a report from the Circle Officer, who submitted his report in which he stated that the 1st party had way straight to the road but in order to obstruct his way, the 2nd party had built straw-hut and put cow-dung etc and blocked the passage.

4. The learned Magistrate, being satisfied, passed a conditional order and in response thereto, the 2nd party appeared and denied the allegation. The learned Magistrate, gave opportunity to the 2nd party to lead evidence and for that purpose, adjourned the case on several dates but he did not avail the opportunity. Ultimately, the learned Magistrate, by order dated 23.6.2003, directed the 2nd party to remove the straw-hut and obstruction, inter alia, holding that by such act, he had obstructed the passage of the villagers as also the 1st party.

5. The revision preferred by the 2nd party has been allowed by the impugned order only on the ground that the dispute being between the 1st party and the 2nd party, remedy u/s 133 of the Code of Criminal Procedure is not available and while allowing the revision application the learned Judge observed as follows:

10.- From perusal of the basis of the proceeding u/s 133 Cr.P.C., the petition of petitioner of this revision, this Court finds that in fact there is a dispute with regard to the approach road of the house of the opposite party. This dispute is between the petitioner and the opposite party of this revision and as such, the dispute is limited to them. In this view of the matter, the grievance of the petitioner would not have been met in a proceeding u/s 133 Cr.P.C. because they had other civil remedies available in law. If the Gairmajarua land was involved in the encroachment as alleged to have been made by the opposite party of this revision, then also there was other remedy in the law for the State and the opposite party both. The encroachment over the Gairmajarua land is alleged to have been made by several residents of the village. Therefore, also the impugned order passed is not found a remedy to the problem.

6. Mr. Sanjev Kumar, appearing on behalf of the 1st party-petitioner submits that the revisional court proceeded on an erroneous assumption that the dispute is between the 1st party and the 2nd party and hence, remedy u/s 133 of the Code of Criminal Procedure, is not available. He points out that the learned Magistrate, while directing for removal of the obstruction, had clearly held that by construction of straw-hut, the 2nd party had not only obstructed the passage of the 1st party but of the villagers also and as such, the order passed by the revisional court is fit to be set aside on this ground alone.

7. In spite of service of notice on opposite party Nos. 2 to 4, nobody has chosen to appear on behalf of opposite party Nos. 2 and 3 but Mr. Ashutosh Kumar, appearing on behalf of opposite party No. 4, however, contends that remedy u/s

133 of the Code of Criminal Procedure is not available to settle the dispute between the two individuals and as such, the revisional court rightly set aside the order of the learned Magistrate.

8. Having appreciated the rival submission, I find substance in the submission of Mr. Sanjeev Kumar. The learned Magistrate, made local inspection and recorded a finding that the 2nd party by constructing straw hut and other constructions, had not only closed the way of the Ist party but also of the villagers. The learned Magistrate had come to the aforesaid conclusion also on the basis of the report given by the court Amin. Thus, the order of the learned Magistrate directing for removal of the obstruction is on the ground that the 2nd party had not only obstructed the right of way of the Ist party but of the villagers.

9. The revisional court had not referred to any material aforesaid but has come to the conclusion that the dispute is between the Ist party and the 2nd party only and as such, the proceeding u/s 133 of the Code of Criminal Procedure is not available. This conclusion of the revisional court is absolutely erroneous and the impugned order being founded on that, same cannot be allowed to stand.

10. In the result, the application is allowed, the order dated 31.1.2004 passed by the 5th Additional Sessions Judge, West Champaran, Bettiah in Cr.Revision No. 160 of 2003, is set aside and that of the learned Magistrate is restored.