
(2025) 10 JH CK 0041

Jharkhand HC

Case No: Criminal Miscellaneous Petition No.862 Of 2023

Vijay Prasad @ Vijay
Kumar Gupta

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Oct. 14, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 — Section 133, 482

Hon'ble Judges: Anil Kumar Choudhary, J

Bench: Single Bench

Advocate: Sheo Kr. Singh, Raj Nandan Chatterjee, Vishwajeet Singh, Diksha Rani, Juhi Kumari, Vandana Bharti, Ashok Kumar, Saibal Mitra

Final Decision: Allowed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 with the prayer to quash the order dated 18.02.2021 passed in connection with Misc. Case No.1429 of 2018 under Section 133 of the Cr.P.C. by the learned Sub-Divisional Magistrate, Sadar, Medninagar and also to quash the order dated 08.12.2022 passed in Criminal Revision No.45 of 2021 by the learned Sessions Judge, Palamau at Daltonganj which was filed challenging the said order dated 18.02.2021 passed in connection with Misc. Case No.1429 of 2018 under Section 133 of the Cr.P.C. by the learned Sub-Divisional Magistrate, Sadar, Medninagar.

3. The brief fact of the case is that the petitioners and the opposite party No.2 are agnates. There was a land dispute between the parties regarding the ancestral land belonging to them and it was held that a Gali (passage) situated over their private ancestral land, will be used by both the parties and none will obstruct and an agreement was also entered into between the parties that bears the

signature of both the parties. The opposite party No.2 herein as the first party, submitted an application under Section 133 of Cr.P.C. against the petitioners with the prayer to direct the petitioners to remove the obstacle formed by them which is the only passage (Gali) for ingress and egress of the members of the first party of that proceeding. The learned Sub-Divisional Magistrate, Sadar, Medninar vide its order dated 18.02.2021 in Misc. Case No.1429 of 2018 directed the petitioners who are the members of the second party of the proceeding under Section 133 of the Cr.P.C. to remove the obstructions from the said passage and to remove the staircase obstructed over the said land within 15 days from the date of that order. Being aggrieved by the said order, the members of the second party who are the petitioners herein, filed Criminal Revision No.45 of 2021 in the court of learned Sessions Judge, Palamau at Daltonganj but the learned Sessions Judge, Palamau at Daltonganj keeping in view the agreement between the parties, did not find any merit in the Criminal Revision and affirmed the order passed by the learned Sub-Divisional Magistrate, Sadar, Medninar and dismissed the Criminal Revision.

4. Learned counsel for the petitioners relies upon the judgment of the Hon^{ble} Supreme Court of India in the case of Vasant Manga Nikumba & Others vs. Baburao Bhikanna Naidu (Deceased) by LRs. & Another reported in 1995 Supp (4) Supreme Court Cases 54 and submits that in para-3 of the said judgment, the Hon^{ble} Supreme Court of India has, in no uncertain manner, held that the proceeding under Section 133 Cr.P.C. is not intended to settle private dispute or a substitute to settle civil dispute, though the proceeding under Section 133 Cr.P.C. is more than the nature of civil proceeding in a summary nature. It is next submitted that the undisputed fact remains that the land in respect of which the proceeding under Section 133 of Cr.P.C. was instituted, was the private land of the parties and not a public place. Hence, both the learned Sub-Divisional Magistrate, Sadar, Medninar as well as the learned Sessions Judge, Palamau at Daltonganj have committed a grave illegality in not taking into consideration the condition precedent for initiation of the proceeding under Section 133 of the Cr.P.C. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

5. Learned Addl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer and submit that the opposite party No.2 herein who was the first party intends to start a vegetable business for his livelihood over the said land and in case he does so, the passage may be used by the public. Hence, no illegality has been committed either by the learned Sub-Divisional Magistrate, Sadar, Medninar or by the learned Sessions Judge, Palamau at Daltonganj. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

6. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that as has been held by the Hon^{ble} Supreme Court of India in the case of Vasant Manga Nikumba & Others vs. Baburao Bhikanna Naidu (Deceased) by Lrs. & Another (supra), the condition precedent for initiation of a proceeding under Section 133 of Cr.P.C. inter alia is that there is an unlawful obstruction or nuisance in a public place or from any way, river or channel which may be lawfully used by the public.

7. Now, coming to the facts of the case, the undisputed fact remains that the concerned land in respect of which the proceeding under Section 133 of Cr.P.C. has been initiated by the learned Sub-Divisional Magistrate, Sadar, Medninagar is a private land. There is no allegation that any public nuisance likely to be caused. Since it is a private dispute between the parties certainly the learned Sub-Divisional Magistrate, Sadar, Medninagar has committed a grave illegality by initiating a proceeding under Section 133 of the Cr.P.C. in respect of the land in question and the learned Sessions Judge, Palamau at Daltonganj has also committed a grave illegality in overlooking this fact that a proceeding under Section 133 of Cr.P.C. cannot be initiated in respect of a private land.

8. Accordingly, the order dated 18.02.2021 passed in connection with Misc. Case No.1429 of 2018 under Section 133 of the Cr.P.C. by the learned Sub-Divisional Magistrate, Sadar Medninagar and also the dated 08.12.2022 passed in Criminal Revision No.45 of 2021 by the learned Sessions Judge, Palamau at Daltonganj which was filed challenging the said order dated 18.02.2021 passed in connection with Misc. Case No.1429 of 2018 under Section 133 of the Cr.P.C. by the learned Sub-Divisional Magistrate, Sadar Medninagar, being not sustainable in law, are quashed and set aside against the petitioners.

9. In the result, this Cr.M.P. stands allowed.