

In the Court of Principal District & Sessions Judge, Samastipur

CRIMINAL REVISION NO. 111 OF 2026

(Arising out of order dated 06.01.2026 passed by learned S.D.M. Samastipur
in M.R. No. 38 of 2026 U/s 126 B.N.S.S)

Shatrudhan Rai, S/o- Maheshwar Rai

R/o Village – Magardahi, Ward No. 35, P.S – Samastipur Muffasil,
District – Samastipur

.....Petitioner

Vrs.

The State of Bihar

.....O.P

Presiding Officer: Sri Samir Kumar, Sessions Judge, Samastipur.

Samastipur, dated 04th day of June, 2026.

=====

ORDER

1. This criminal revision has been filed on behalf of above named petitioner and is directed against the order dated 06.01.2026 passed by the Ld. Court below i.e Court of S.D.M. Samastipur in M.R. No. 38 of 2026, whereby and whereunder the learned S.D.M. Samastipur initiated a proceeding under Section 126 B.N.S.S and directed the Present/Petitioner to file show cause in the case.

2. Heard Sri Manoj Kumar Giri, Ld. Counsel appearing for the petitioner and Sri Shiv Kumar Prasad, learned P.P for the State.

3. At the time of hearing, it was submitted on behalf of the petitioners that the learned court below erred by not mentioning the description of overt act alleged to have been committed by the notice of the show cause/petitioners and in the absence of the same the impugned order is illegal as the petitioners are not in a position to know the alleged wrong committed by them. Further submitted that it was not enough to mention that there is

tension between the parties owing to registration of Muffasil P.S Case No. 197/2025 dated 23.07.2025. Further submitted that there is non-compliance of mandatory provision of law under Section 130 of the B.N.S.S.

4. The Ld. P.P vehemently opposed the submission of Id. Counsel for the petitioners and submitted that there is full compliance of provision of Section 130 of B.N.S.S. Further submitted that the proceeding before the Court below is preventive in nature and hence, order passed cannot be interfered lightly.

5. Section 126 of the B.N.S.S corresponding to old Section 107 Cr.P.C clearly speaks that whenever a magistrate is informed that any person is likely to commit a breach of peace he may require such person to show cause as to why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for a period not exceeding one year. This has to be done in the manner provided in the subsequent sections and the manner is provided in Section 130 of the B.N.S.S. That section requires a Magistrate to make an order in writing setting forth the substance of information received”.

6. Hon'ble Patna High Court, Ranchi Bench, in case of Nirmal Kumar Ghosh V. State of Bihar & Another BBCJ 1999 V-103, relying upon its earlier judgment in the case of Kuldip Singh Chawla V. State of Bihar & Another(1988) BLT 325 held that”it is the fundamental requirement of law that there must be some material to show that the petitioner had committed any overt act or any wrong so that reasonable apprehension of breach of peace can be prevented at the instance of any of the petitioner and for that purpose specific overt act must be assigned against each individual person who is proceeded against under Section 107 Cr.P.C and if it is not done drawing up a proceeding against that person for want of specific overt act or wrong done, cannot be sustained in law.

7. In that case, the Hon'ble Court further held that the police report

nowhere reveals that the petitioner has taken the law in his own hand and committed any overt act which may lead to breach of peace. In this circumstance, in any view, the Magistrate has failed to exercise his jurisdiction vested in him under law by initiating the proceeding and issuing notice to the parties.

8. Similarly, Hon'ble Patna High Court in the case of Bal Kishan Sao V. Munnu Khan B1JR 1969, page 479, in a Revision against order of Magistrate drawing proceeding under Section 107 Cr.P.C has been pleased to observe that "It is not stated in this order as to what was the substance of the report of the police and in what matter the petitioners were likely to commit breach of the peace. It is also not stated as to with regard to which graveyard there was apprehension of breach of the peace. All these things have been left vague. The notices to show cause served on the petitioners were in these very terms. Therefore, it was not clear from the contents of the notices as well as to what allegations the petitioners were to answer."

9. Hon'ble Patna High Court in the case of Md. Saquib Ahsan Vs. State Of Bihar reported in 1997(1) PLJR, where an identical order was passed by Sub-Divisional Magistrate, West Muzaffarpur held that the Magistrate exercising power under Section 111 of Code of Criminal Procedure must record a statement about the existence of breach of peace after recording the substance of accusation and the substance of information. Further, in that case, the Hon'ble Court held that in the impugned order of that case, the Learned Magistrate has not stated the substance of the report of the police and in what manner, the petitioner was likely to commit breach of peace. It is also not stated as to with regard to which land there was apprehension of breach of peace and observed that in that case, the Learned Magistrate has failed to apply its mind and passed the order in a mechanical way which is vitiated in law.

10. From perusal of the impugned order of this case also, I find that the

learned Magistrate has not indicated the substance of accusation or substance of information in his order. The impugned order also does not show as to under what manner the petitioners are likely to commit breach of peace and it merely states that dispute frequently arises between First Party of M.R No. 38/2026 Sajan Kumar and Second Party Shatrudhan Ray for which Muffasil P.S Case No. 197/2025 dated 23.07.2025 has been registered and due to lodging of this case there is an apprehension of breach of peace between the parties.

11. Keeping in view the settled principle of law in the case of Bal Kishan Sao V. Munnu Khan(Supra),Md. Saquib Ahsan Vs. State of Bihar(Supra) and Nirmal Kumar Ghosh V. State of Bihar & Another(Supra), I have no hesitation in holding that the impugned order is not in conformity with law and do not contain the essential ingredients as required by law. Accordingly, the impugned order is set aside.

12. In the result, this criminal revision is allowed.

(Dictated)

Sessions Judge

Date of Judgment / Order	04.06.2026
Date of Reserving Judgment / Order	04.06.2026
Uploading Date	06.06.2026
Uploaded by	Ashish Kumar