

In the Court of Principal District & Sessions Judge Samastipur

CRIMINAL REVISION NO. 175 OF 2026

1. Ram Vilash Mahto son of Late Bholi Mahto
2. Sujit Mahto @ Sujit Kumar son of Late Kantlal Mahto.

Both R/o Village Bachhauli, P.S. Khanpur, District Samastipur.

-----Petitioners
Vrs.

The State of Bihar -----O.P.

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

Samastipur, the 18th.day of June 2026

=====

ORDER

1. This criminal revision has been filed on behalf of above named petitioners and is directed against the order dated 15.01.2026 passed by the Ld. Court below i.e Court of S.D.M. Samastipur in M.R.No.114 of 2026, whereby and whereunder the learned S.D.M. Samastipur initiated a proceeding under Section 126 of the B.N.S.S and directed the Petitioners/O.P. 2nd.Party of M.R.No.114 of 2026 to file show cause in the case.

2. Heard Sushil Kumar Roy- Ld. counsel appearing for the petitioners and Sri Shiv Kumar Prasad-Ld. 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 noticee 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 due to lodging of Khanpur P.S. Case No.257 of 2025 and Khanpur P.S. Case No.258 of 2025. Ld. Counsel lastly submitted that it is settled principle of law that proceeding under Section 107 Cr.P.C corresponding to Section 126 B.N.S.S can only be initiated when there is some overt act alleged after lodging of criminal case but here in the present case for the same incident proceeding under Section 126 B.N.S.S has been started by the court below in a routine manner without applying his judicial mind, which is not maintainable in the eye of law and fit to be set aside.

4. The Ld. P.P has opposed the submission of Ld. Counsel of the petitioners and submitted that there is no illegality or irregularity in the impugned order.

5. Section 126 (old Sec.107 Cr.P.C) of the B.N.S.S 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 (Old Sec 111 Cr.P.C). 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 (New 126 B.N.S.S) 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 BJR 1969, page 479, in a Revision against order of Magistrate drawing proceeding under Section 107 Cr.P.C (New 126 B.N.S.S) 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 (New Sec 130 B.N.S.S) 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 in between the parties (i.e. O.P.1st.Party Kamlesh Mahto and O.P.2nd.Party Ram Vilash Mahto of M.R.No.114 of 2026) an incident of 'GALI-GALAUZE AND MAARPEET' took place and relating to said incident Khanpur P.S.Case No. 257 of 2025 and Khanpur P.S.Case No.258 of 2025 was lodged on 20.12.2025, for which both the parties can fight again and they may also create problem of law and order. It is settled principle of law that proceeding under Section 107 Cr.P.C corresponding to Section 126 B.N.S.S can only be initiated when there is some overt act alleged after lodging of criminal case but here in the case no overt act is alleged to have been occurred after lodging of criminal case.

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)

(Samir Kumar)
Sessions Judge
Samastipur.
18.06.2026

Date of Judgment / Order	18.06.2026
Date of Reserving Judgment / Order	18.06.2026
Uploading Date	20.06.2026
Uploaded by	Ashish Kumar