

In the Court of Principal District & Sessions Judge Samastipur

CRIMINAL REVISION NO. 295 OF 2026

Kamaldeo Ray @ Kamaldev Prasad son of Late Nepali Ray, Resident of Village Gadhi Mohanpur, P.S. Mohanpur, District Samastipur.

-----Petitioner

Vrs.

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

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

Samastipur, the 25th day of June 2026

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ORDER

1. This criminal revision has been filed on behalf of above named petitioner and is directed against the order dated 17.04.2026 passed by the Ld. Court below i.e Court of S.D.M. Patory in M.R.No.194 of 2026, whereby and whereunder the learned S.D.M. Patory initiated a proceeding under Section 126 of the B.N.S.S and directed the Petitioner/O.P. 2nd. Party of M.R.No.194 of 2026 to file show cause in the case.

2. Heard Sri Vishwanath Rai- Ld. Counsel appearing for the petitioner and also heard Sri Shiv Kumar Prasad-Ld. P.P for the State.

3. At the time of hearing, it was submitted on behalf of the petitioner 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/petitioner and in the absence of the same impugned order is illegal as the petitioner is not in a position to know the alleged wrong committed by him. Further submitted that it was not enough to mention that there is tension between the parties owing to personal dispute. 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 has opposed the contention of the Ld. Counsel of the petitioner and submitted that there is no illegality or irregularity in the impugned order.

5. Section 126 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. 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 BJR 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."

09. 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 petitioner is likely to commit breach of peace and it merely states that owing to personal dispute there is tension between the parties. In the impugned order it is not clear what the dispute is about and further neither date nor time nor any overt act has been mentioned, which is vague.

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 stands **allowed**.

(Dictated)

(Samir Kumar)
Sessions Judge
25.06.2026

Date of Judgment / Order	25.06.2026
Date of Reserving Judgment / Order	25.06.2026
Uploading Date	27.06.2026
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