

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2098 of 2024

1. Rajesh Kumar Kushwaha, Son of Ramji Mahto @ Ramjee Mahto, aged about 35 years
2. Ramji Mahto @ Ramjee Mahto, Son of Mahabir Mahto, aged about 61 years, Both are Resident of village -Tandwa, P.O., P.S. and District -Garhwa.

..... Petitioners

Versus

1. The State of Jharkhand
2. Shambhu Prasad, Son of -Bihari Saw, Village -Tandwa, P.O., P.S. and District -Garhwa.

..... Opposite Parties

For the Petitioners	:	Mr. Diwakar Jha, Advocate
	:	Mr. Prabhat Kr. Sinha, Advocate
For the State	:	Mr. Suraj Deo Munda, Addl. P.P
For the O.P. No.2	:	Mrs. Jasvindar Mazumdar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:-

I.A. No. 15346 of 2025

1. Heard the parties.
2. This interlocutory application has been filed with the prayer for early hearing of this criminal miscellaneous petition.
3. Since, hearing of this criminal miscellaneous petition is taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No. 2098 of 2024

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 with the prayer to quash the order dated 03.06.2024, passed in Criminal Revision No. 73 of 2023 by the learned Sessions Judge, Garhwa whereby and where under the learned Sessions Judge has dismissed the Criminal Revision filed against the order dated 21.08.2023, passed by the learned Sub Divisional Magistrate, Garhwa in Misc. Case No. 355 of 2020. Prayer has also been made to quash the order dated 21.08. 2023, passed by the learned Sub Divisional Magistrate , Garhwa in Misc. Case No. 355 of 2020 in exercise of the power under section 147 Cr.P.C. by which direction has been given to the petitioner to remove the wall which is 112 feet long and 5 feet wide on Khata No. 27, Plot No. 1229 of Village -Tandwa. Further consequential reliefs have also prayed for in this criminal miscellaneous petition.
3. The brief fact of the case is that the opposite party no.2 filed an application before the Sub Divisional Magistrate, Garhwa urging upon the Sub Divisional Magistrate that a dispute which may likely to cause a breach of peace exists regarding the right of the petitioners to use the path to approach the road going towards Ranka. It was further claimed that water of Jhunukia Pond is being obstructed by construction of the boundary wall by the

petitioners herein; who were the second party before the Sub Divisional Magistrate, Garhwa. The undisputed fact remains that the petitioners have constructed the boundary wall over their own *raiyati* land. The said boundary wall was constructed in the year 2010. The Sub Divisional Magistrate drew up a proceeding under Section 147 Cr.P.C and asked the parties to the case to file their statement of facts. In the statement of facts filed by the first party before the Sub Divisional Magistrate, Gahrwa who is the opposite party no.2 of this criminal miscellaneous petition, the first party to the proceeding under Section 147 of Cr.P.C. has nowhere stated as to on which date, the petitioners herein constructed the boundary wall over their own *raiyati* land nor it has been mentioned as to on which date the first party last used the path which he claims to have been used before construction of the boundary wall by the petitioners herein. The Sub Divisional Magistrate, Gahrwa considered that because of construction of the boundary wall by the petitioners herein, over their own *raiyati* land, the opposite party no.2 herein, has to go through the land of other persons to approach the Garhwa-Ranka Main Road. The Sub Divisional Magistrate, Gahrwa also considered that by the construction of the boundary wall, the culvert situated on the main road has been blocked. The exit way for the water of the Jhunukia Pond to go out has been closed and the same amounts to encroaching the public place. So, the water of Jhunukia Pond is getting

accumulated towards the southern side of the house of the first party and the Sub Divisional Magistrate, Garhwa directed the petitioners to remove the wall blocking the 112 feet length and 5 feet width road, which is also causing obstruction of the exit of water from Jhunukia Pond and went on to the order that failing in compliance of the said order, the said wall shall be removed by the administration. Being aggrieved by the order dated 21.08.2023, passed in Misc. Case No. 355 of 2020 by the Sub Divisional Magistrate, Garhwa, the petitioners filed Criminal Revision No. 73 of 2023 in the court of Sessions Judge, Garhwa. The learned Sessions Judge, Garhwa considered that at present, there is no road to reach the applicant's house and there is no government land. The distance from the applicant's house to the Ranka Main Road is about 112 feet but the road is closed due to construction of boundary wall on the land owned by the petitioners and before construction of the boundary wall, the applicants used the said land to approach their house. The learned Sessions Judge considered that as per the report of the Executive Officer, Nagar Parishad, Garhwa, a notice was given to the petitioners for illegal work under Section 426 of the Jharkhand Nagar Palika Act, 2011. The inspector of Nagar Parishad, Garhwa also reported that the flow of water of Jhunukia Aahar has been obstructed by the petitioners as the bridge from which water was flowing has been blocked. It was also forthcoming from the report of the Nagar

Parishad that earlier the first party used to use the 112 feet long and 5 feet wide patch of the land of the petitioners to approach the Garhwa-Ranka Main Road; which has been closed by the petitioners herein, who were the second party before the S.D.M., Garhwa, by erecting a wall which amounts to encroachment of a public place; more so because the boundary wall has blocked the bridge situated at the main road and the learned Sessions Judge, Garhwa finding no illegality in the court impugned before it passed by the Sub Divisional Magistrate, dismissed the Criminal Revision.

4. It is submitted by the learned counsel for the petitioners that the opposite party no.2 -first party filed a proceeding under Section 107 Cr.P.C. against Parmeshwar Das and Umesh Kumar Das vide Misc. Case No. 658 of 2016 in which he claimed that he used to use the land under Plot No. 1226 belonging to Umesh Kumar Das to approach the Garhwa-Ranka Main Road. It is then submitted though that the said case has been dismissed, but the admission made by the opposite party no.2 -first party remains. It is next submitted that hence the contention of the opposite party no.2 herein that the land of the petitioner is the only way to approach his house is out and out false; which important fact both the learned Sub Divisional Magistrate, Garhwa as well the learned Sessions Judge, Garhwa failed to notice. It is then submitted that there is no averment on the part of the opposite party no.2 of this

case, who was the first party before the Sub Divisional Magistrate, Garhwa as to when the petitioner constructed the boundary wall, whereas it is the specific case of the petitioner that the boundary wall was constructed in the year 2010 and the case having been filed for the first time in the year 2020. It is then submitted that as the boundary wall was in existence for a decade, after such a delay, the boundary wall cannot be demolished by using the power under Section 147 of the Cr.P.C. by the learned Sub Divisional Magistrate, Garhwa. It is next submitted that since admittedly the place over which the boundary is situated is exclusively owned by the petitioners and admittedly it is the private property of the petitioners, therefore, it cannot be said that the same is a public place and in the absence of the place being a public place, the exercise of the power under Section 147 Cr.P.C. is not sustainable in law. Hence, it is submitted that the prayer as prayed for by the petitioners in this criminal miscellaneous petition be allowed.

5. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer as prayed for by the petitioner in this criminal miscellaneous petition. It is submitted by the learned counsel for the opposite party no.2 that the claim of the petitioners that the petitioners constructed the boundary wall in the year 2010 has come before the learned Sub Divisional Magistrate, Garhwa at the time of oral

submission of the argument but there is no document nor any pleading or none of the witnesses of the members of the second party have stated that the boundary wall has been constructed in the year 2010. It is next submitted that since the first party has the right to use the concerned patch of land to use the same as egress and ingress to his house and as the boundary wall constructed by the members of the second party-petitioners has obstructed the only way available to the opposite party to approach the Ranka-Garhwa Main Road, besides obstructing the exit of the water from the Pond; therefore, it is submitted that no illegality has been committed by the learned Sub Divisional Magistrate, Garhwa or the learned Sessions Judge, Garhwa in, respectively allowing the petition under Section 147 Cr.P.C. and dismissing the Criminal Revision No. 73 of 2023. It is next submitted by the learned counsel for the opposite party no.2 that as per the report submitted by the Circle Officer, Garhwa, there is no road to approach the house of the opposite party no.2 nor is there any government land. It is next submitted that by construction of the wall, the road has been closed, therefore, he recommended for exercise of the power under Section 133 of the Cr.P.C. by the Sub Divisional Magistrate. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

6. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to

mention here that it is a settled principle of law that the power under Section 147 Cr.P.C. cannot be exercised by any Executive Magistrate or the Sub Divisional Magistrate; if an obstruction is existing for a long period of time.

7. It is relevant to quote Section 147(3) of the Cr.P.C. which reads as under:-

*“147 (3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:
Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt. (Emphasis supplied)*

8. A plain reading of Section 147(3) of the Cr.P.C. goes to show that the power under Section 147 of the Cr.P.C. for removal of any obstruction in exercise of any right of a party exist for using any land as a road if and only if such right has been exercised within three months before the receipt under Section 147(1) of the report of a police officer or other information leading to the institution of the enquiry.

9. Now coming to the facts of the case, as already indicated above, the opposite party no.2 herein who was the first party before the Sub Divisional Magistrate, Garhwa, for reasons best known to him

has not come up with any date when the alleged wall was constructed by the petitioners herein nor there is any evidence or pleading that he used the path within three months before filing the application before the Subdivisional Magistrate, whereas, it is the specific case of the petitioners, as is evident from the submissions made before the learned Executive Magistrate that the petitioners constructed the boundary wall in the year 2010. Section 147 of the Cr.P.C. without doubt is a stop gap arrangement; in order to prevent breach of peace. The undisputed fact remains that, the land over which the wall is existing at present is a *raiyati* land of the petitioner and it is a private property. If at all the privately owned property of the petitioner is causing any hindrance in free flow of water, certainly the government if so, advised may acquire the land for making construction of any path for exit of the water in accordance with law.

10. Coming to the facts of the case, here the exclusive right of the petitioners to carry out construction over his own property is sought to be curtailed in exercise of power under Section 147 of the Cr.P.C. which is not permissible in law; more so because there is absolutely no pleading as to when the wall was constructed by the petitioners and the right of the members of the first party to use the said land for entry or exit to their house was ever exercised, any time within three months before the receipt of the report of the police officer or even filing of the application. In the absence of the

same, this Court has no hesitation in holding that the learned Sub Divisional Magistrate, Garhwa as well as the learned Sessions Judge, Garhwa have committed grave illegality by not considering the essential requirement for passing such order under Section 147 of the Cr.P.C.

11. Accordingly, the order dated 03.06.2024, passed in Criminal Revision No. 73 of 2023 by the learned Sessions Judge, Garhwa whereby and where under the learned Sessions Judge has dismissed the Criminal Revision filed against the order dated 21.08.2023, passed by the learned Sub Divisional Magistrate, Garhwa in Misc. Case No. 355 of 2020 and also the order dated 21.08.2023, passed by the learned Sub Divisional Magistrate, Garhwa in Misc. Case No. 355 of 2020 in exercise of the power under section 147 Cr.P.C. by which direction has been given to the petitioners to remove the wall which is 112 feet long and 5 feet wide on Khata No. 27, Plot No. 1229 of Village -Tandwa, is quashed and set aside.

12. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 24th November, 2025
AFR/Sonu-Gunjan/-

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