

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL REVISION No.676 of 2023**

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

Chandradeo Paswan S/O Late Rameshwar Paswan Resident Of New Purandarpur, Near Jakkanpur, P.O- G.P.O., Jakkanpur, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through The District Magistrate, Patna. Bihar
2. The District Magistrate, Patna. Bihar
3. The Senior Superintendent of Police(SSP), Patna. Bihar
4. The Sub Divisional Magistrate, Patna Sadar, Patna Bihar
5. The Circle Officer, Sadar, Patna. Bihar
6. The Officer-In-Charge, Sho, Jakkanpur Police Station, Patna. Bihar
7. Dwivedy Surendra S/o Sheo Pratap Dubey R/O Shiv Shanti, Plot No.- B/10, Road No.-1, Vivek Bihar, Hanuman Nagar, Kankarbagh, Patna, P.O- Lohiya Nagar, P.S- Patrakar Nagar, Distt.- Patna.

... .. Respondent/s

**Appearance :**

For the Petitioner/s	:	Mr.Jagjit Roshan, Advocate Mr. Anjani Kumar, Advocate Mr. Apul, Advocate
For the State	:	Mr.Zainul Abedin, APP
For O.P. No. 7	:	Mr. Subodh Kumar Jha, Advocate Mr. Nagendra Dubey, Advocate Mr. Nagmani Kumar, Advocate Mr. Shivam, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA  
CAV JUDGMENT**

**Date : 11-03-2026**

The instant criminal revision has been filed against the order dated 25.06.2023 passed by learned Sub-divisional Magistrate, Patna Sadar, Patna under Section 147 of the Code of Criminal Procedure in Misc. Case No. 1084(M) of 2022, whereby and whereunder the learned Sub-divisional



Magistrate, Patna Sadar, Patna has recalled/reviewed the final order dated 19.04.2023 passed in miscellaneous proceeding bearing Misc. Case No. 1082(M) of 2022. Further, by way of interlocutory application the petitioner added the following prayer in his revision petition:-

*"(i) For taking appropriate legal action against Opposite Party No. 7 for making false statement on Oath/Affidavit in Para No. 8 of the Counter Affidavit filed by Opposite Party No. 7 in the present Revision Application bearing Criminal Revision No. 676 of 2023.*

*(ii) For setting up an appropriate enquiry with regard to making a false statement on Oath/Affidavit in Para No. 8 of the Counter Affidavit filed by the Opposite Party No. 7 in the present Revision Application bearing Criminal Revision No. 676 of 2023 and further recommend for appropriate proceeding as per law for filing false statement on Oath/Affidavit before this Hon'ble High Court in Criminal Revision No. 676 of 2023."*

2. Briefly stated, the facts of the case are that one writ petition bearing C.W.J.C. No. 224 of 2022 was filed by Opposite Party No. 7 for issuance of an appropriate Writ directing the Respondent Nos. 2 & 3 (here Opposite Party Nos.



2 & 3) to depute a Magistrate along with adequate Police Force including S.H.O., Jakkanpur Police Station (Opposite Party No.65) and Circle Officer, Patna Sadar (Opposite Party No. 5) to maintain law and order in construction of wall on his own land measuring one katha, one dhur and four dhurki (40 Feet x 36 Feet) Total 1440 Sq. Ft. in Circle No. 260, Khata No. 11, Tauzi No. 247, Plot No. 122, 123 situated at Mohalla New Purandarpur, P.S. - Jakkanpur, patna in the light of measurement report submitted by Anchal Amin in Measurement Case No. 34/2007-08. It appears that without issuing notice to the present petitioner an interim order dated 28.06.2022 was passed in C.W.J.C. No. 224 of 2022 directing for removal of the Khatal from the raiyati land of the petitioner and further vide order dated 04.07.2022 passed in C.W.J.C. No. 224 of 2022, the District Magistrate was directed to visit the site personally and to ensure that encroachment made by the private parties is removed forthwith and further direction was given to register criminal case against the encroacher who violated the orders of this Court. In this manner, the private Khatal of the petitioner was removed from ancestral property. When the petitioner got the knowledge of the said order, he appeared *suo motu* in the writ petition on 11.07.2022 and filed a counter affidavit on



12.07.2022 and supplementary counter affidavit on 30.07.2022 stating all the facts. However, in the light of order dated 04.07.2022 passed in C.W.J.C. No. 224 of 2022, the District Magistrate, Patna along with Additional Collector (Revenue), Patna, Circle Officer, Patna Sadar, Patna, S.H.O., Jakkanpur Police Station, Revenue Karamchari, Anchal Amin, opposite party no. 7 and the petitioner made inspection of the plot in question on 07.07.2022 and prepared a joint inspection report with following findings:-

- (i) Plot in question belongs to Mauza - Purandarpur, Khata No. 11, Khesra No. 122,*
- (ii) Opposite Party No. 7 has constructed boundary wall on part of the plot in question, bearing 1 Katha, 1 Dhur, 4 Dhurki (40 Feet x 36 Feet) and construction of boundary wall is in progress,*
- (iii) The Khatal of the petitioner on the western side of the plot has been removed by the SHO, Jakkanpur and C.O., Patna Sadar in compliance of order dated 28.06.2022.*
- (iv) Opposite Party No. 7 states that the petitioner has constructed wall on the western side by saying that it was raiyati land,*
- (v) Opposite Party No. 7 claimed that wall on the western side was encroachment and construction of Chhajja on the northern side*



*was encroachment though petitioner stated that Chhajja was constructed on his land.*

3. The SHO, Jakkanpur Police Station and Circle Officer, Patna Sadar were directed to enquire into the matter and prepare a site map. Accordingly, a report dated 07.07.2022 was prepared suggesting the nature of land was raiyati and the basis of claim was registered document. Thus, in the light of these facts, report dated 07.07.2022 was sent to the learned SDM, Patna Sadar by the Circle Officer vide letter No. 5447 dated 07.07.2022 to initiate a proceeding under Section 147 of the Code of Criminal Procedure (In short 'the CrPC'). On the basis of recommendation letter No. 5447 dated 07.07.2022 of the Circle Officer, Patna Sadar; and also on the basis of joint report dated 07.07.2022 by the CO, Patna Sadar and SHO, Jakkanpur Police Station, a proceeding under Section 147 of the CrPC was initiated in connection with Plot bearing Khata No. 11, Plot No. 122, Rakba - 1 katha, 1 dhur, 4 dhurki. Accordingly, notice was issued on 08.07.2022 and from the notice it transpired that dispute related to construction of Chhajja by the petitioner on the northern side of the plot of Opposite Party No. 7 in the proposed 4 feet Rasta. Notice was issued to both the parties and who were directed to file their respective show cause by



14.07.2022. Opposite Party No. 7 filed his show cause on 11.10.2022 and the present petitioner filed his show on 19.12.2022. It further transpires that the writ petition bearing C.W.J.C. No. 224 of 2022 was finally disposed of on 03.01.2023 mentioning that both the parties at Bar have agreed that proceeding under Section 147 of the CrPC had been initiated by the SDM, Patna Sadar, Patna and opposite parties have appeared and filed their show cause and thus the learned SDM, Patna Sadar, Patna was directed to dispose of the proceeding under Section 147 of the CrPC within a period of two months. It was further directed that, if any, encroachment was found on the subject land, the authority concerned shall proceed in accordance with law for removal of encroachment. After two months, opposite party no. 7 filed a contempt petition bearing M.J.C. No. 872 of 2023 against the interim orders dated 04.07.2022 and 10.11.2022 passed in C.W.J.C. No. 224 of 2022. Further, case of the petitioner is that the petitioner was not issued any notice in the contempt proceeding and without giving opportunity of hearing to the present petitioner, the learned Coordinate Bench proceeded with the contempt application on an interim order although final order has been passed in the said case. Vide order dated 05.04.2023 passed in M.J.C. No. 872 of



2023, the learned Co-ordinate Bench heard the contempt application and vide order dated 12.04.2023, learned counsel for the State was granted last chance of one week to file show cause. During the pendency of contempt proceeding bearing M.J.C. No. 872 of 2023, the SDM, Patna Sadar, Patna passed the final order dated 19.04.2023 in Misc. Case No. 1084(M) of 2022 and this fact was brought to the notice of this Court in contempt proceeding by filing show cause on 20.04.2023. The validity of final order dated 19.04.2023 passed in Misc. Case No. 1084(M) of 2022 came up for consideration in contempt proceeding bearing M.J.C. No. 872 of 2023 and vide order dated 20.04.2023, the learned SDM, Patna Sadar was directed to appear on 26.04.2023. Thereafter, vide order dated 26.04.2023, the learned SDM, Patna Sadar was directed to take corrective steps in accordance with law and pass a fresh order after hearing both the parties as the final order has been passed in *bala bala* manner without hearing the parties, particularly opposite party no. 7. Thus, in the light of order dated 26.04.2023, the final order passed in Misc. Case No. 1084(M) of 2022 was recalled by the learned SDM, Patna Sadar vide order dated 28.04.2023. On notice the petitioner appeared and opposed the recalling of the final order stating to be barred under Section 362 of the



CrPC and also challenged the hearing of the proceeding. A report was called for from the DCLR, Patna Sadar by the SDM, Patna Sadar and DCLR, Patna Sadar submitted his report dated 10.05.2023 which is a joint report sent by DCLR, CO and the Revenue Karamchhari, Patna Sadar. This report specifically mentioned that father of opposite party no. 7 purchased 1 katha 1 dhur 4 dhurki of land through registered sale deed and in the northern side of plot there was a 4 feet wide rasta in which 2 feet was to be left by opposite party no. 7 and 2 feet by Jhari Paswan. From the spot inspection this fact also came to the notice that opposite party no. 7 has constructed boundary wall on the entire plot which has been purchased by his father. But the petitioner has left 2 feet on the surface but constructed roof and Chhajja on the 2 feet left by him. During inspection this fact was also noticed that there is 40 feet x 8 feet space on the western side which is a vacant land which was closed at southern end and nobody used it for passage. The said vacant land is not shown as Rasta in the registered sale deed of opposite party no. 7. Thus, both the parties have not complied the terms of registered sale deed as at one hand, the opposite party no. 7 has not left 2 feet from his share and has constructed boundary wall on the entire plot without leaving 2 feet land



and the petitioner has left 2 feet on the surface but constructed Chhajja on the upper floor which has come over the boundary wall of opposite party no. 7. Therefore, a wrong report has been given that a Chhajja was wrongly constructed whereas as per the registered sale deed both the sides have been allowed to open doors and windows including Chhajja in that 4 feet of land. Further case of the petitioner is that though the learned SDM, Patna Sadar received the report of the DCLR, Patna Sadar earlier but the learned SDM again called for report on two points:-

*(a) Status of title on the western side of the plot of opposite party no. 7 in which he is claiming rasta,*

*(b) The available rasta on the northern side is sufficient or not.*

Thereafter, some adjournments were granted and it appears learned SDM, Patna Sadar finally passed the order on 25.06.2023. The petitioner received certified copy on 08.08.2023. It further transpires an amended order vide Memo No. 2992 dated 27.06.2023 was passed stating that in Misc. Case No. 1084(M) of 2022, the final order was passed on 26.06.2023 but due to mistake it was stated 25.06.2023 and thus, it was to be read as 26.06.2023 instead of 25.06.2023. The



petitioner did not receive the certified copy of the order and the proceeding of contempt has been going on and vide order dated 19.07.2023 passed in M.J.C. No. 872 of 2023, the Circle Officer, Patna Sadar appeared in the court and was directed to get the site measured again so that there is no dispute. Thereafter, the petitioner, on 27.07.2023 preferred L.P.A. No. 915 of 2023, challenging the orders dated 04.07.2022 and 10.11.2022 as the contempt proceeding has been initiated against the said order. L.P.A. was dismissed as withdrawn with liberty to file a proper appeal vide order dated 31.07.2023. In the light of liberty granted to the petitioner, a fresh L.P.A. No. 941 of 2023 was filed on 02.08.2023 but the same was converted into miscellaneous appeal with the direction of learned Division Bench vide order dated 23.08.2023 and a new case number bearing M.A. No. 570 of 2023 was issued. While issuing notice to respondent nos. 7 to 10 in the miscellaneous appeal, interim stay was granted as against the order impugned for a period of one month. In the light of order dated 25.06.2023 passed by learned SDM, Patna Sadar, it is claimed that the opposite party no. 7 disturbed the peaceful possession of the petitioner on 40 feet x 8 feet space on the western side of the plot of opposite party no. 7 which is a vacant raiyati land of the



petitioner. Thus, it has been prayed that opposite parties be directed to restore the possession of said land to the petitioner.

4. By filing I.A. No. 01 of 2024 petitioner made amendment in the main revision petition and added further two prayer. The petitioner contended that in paragraph no. 8 of the counter affidavit, opposite party no. 7 has given a false statement that "**repeatedly direction was given to show the documents related to the encroached land but he failed to produce any document before this Hon'ble Court.**" The petitioner submitted that in C.W.J.C. No. 224 of 2022 notices were never issued to the petitioner and the petitioner appeared *suo motu* in the said writ petition on 11.07.2022 and recommendation for initiating proceeding under Section 147 of the CrPC was made on 07.07.2022 then it was not possible that this Court demanded document as claimed by opposite party no. 7 and statement given by opposite party no. 7 is false statement.

5. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad in the eye of law as well as on facts. The learned SDM, Patna Sadar issued notice in the present proceeding only for the purpose that the dispute relates to construction of Chhajja by the petitioner on the northern side of the plot of opposite party no. 7 in the



proposed 4 feet rasta and accordingly, show cause was filed by both the parties. But in the impugned order completely new issues were decided for which notice was never issued. Learned counsel further submitted that once final order has been passed on 19.04.2023, it was not open for the learned SDM, Patna Sadar to recall/review the order except to correct clerical or arithmetical error as provided under Section 362 of the CrPC. Learned counsel further submitted that the court becomes *functus officio* after signing the judgment or final order disposing of a case and for this reason could not review its earlier order. Learned counsel referred the decisions of Hon'ble Supreme Court in the case of ***Mohammed Zakir Vs. Shabana & Ors., 2018(3) PLJR (SC) 379*** and also in the case of ***Sanjeev Kapoor Vs. Chandana Kapoor & Ors., 2020(2) PLJR (SC) 19***, wherein it has been held by the Hon'ble Supreme Court that criminal justice delivery system does not cloth criminal court with power to alter or review the judgment or final order disposing the case except to correct the clerical or arithmetical error. It has further been held that however patently erroneous the earlier order be, it can only be corrected in the process known to law and not under Section 362 of the Cr.P.C. Learned counsel also referred to a decision of learned Single Judge of



this Court in the case of *Sri Haridwar Pandey Vs. The State of Bihar through Vigilance Department*, in 2015(1) PLJR 901 on the same point.

6. Learned counsel next submitted that the learned SDM further failed into error by directing the Circle Officer for measurement without appreciating the documents and the sale deed. Learned SDM, Patna Sadar did not appreciate terms of the sale deed and came to the conclusion that construction of Chhajja is an encroachment but the same is a wrong finding. The learned SDM, Patna Sadar even overlooked the report dated 10.05.2023 submitted by DCLR, Patna Sadar. The learned SDM, Patna Sadar further manipulated the records. On hand hand, he called for a report vide letter No. 2921 dated 26.06.2023 from the D.C.L.R., Patna Sadar and on the other hand, passed the impugned order on a back date, i.e., 25.06.2023 and later on, tried to justify it by amendment order dated 27.06.2023 stating that final order was passed on 26.06.2023 but due to mistake it was stated as 25.06.2023. Learned counsel further submits that 25.06.2023 was a Sunday. Therefore, there is gross illegality/irregularity in passing of order by learned SDM, Patna Sadar. Learned counsel further submitted that the learned SDM did not record his satisfaction



that there was possibility of dispute causing a breach of peace and hence, the essential condition under Section 147 of the CrPC is not fulfilled. Further, there is no recording of the fact that the opposite party no. 7 has exercised any right with regard to land in question within three months when the matter was reported to the authority. In support of his contention, learned counsel referred to two decisions of this Court in the case of ***Guru Govind Singh & Ors. Vs. The State of Bihar & Anr., 2017(2) PLJR 715*** and in the case of ***Ramashish Mahto & Ors. Vs. The State of Bihar & Anr., 2023(4) PLJR 865***, wherein it has been held that it is mandatory for the Executive Magistrate to record his satisfaction that there exists a dispute, which is likely to cause a breach of peace and unless such satisfaction is reached and recorded, the Magistrate cannot make an order under Section 147 of the CrPC. Thus, learned counsel submitted that the impugned order could not be sustained and needs interference by this Court in the present revision petition.

7. Learned counsel appearing on behalf of opposite party no. 7 vehemently contended that the present revision petition is not maintainable as by filing the present revision petition, the petitioner is seeking review of the order passed by the learned Co-ordinate Bench in M.J.C. No. 872 of



2023. The petitioner has suppressed the material facts and has made misleading and false submissions and such submissions are fit to be rejected. The petitioner failed to produce any document related to encroached land despite repeated direction of this Court while hearing the matter. Even when the District Magistrate, Patna along with other officials have been making enquiry and measurement of land in question on 07.07.2022 and requested the petitioner to produce the document in respect of his claim over the encroached land, the petitioner failed to show such document to justify his claim. For this reason, the District Magistrate, Patna directed the Circle Officer, Patna Sadar for initiating a proceeding under Section 147 of the CrPC for declaring 8 feet wide and 40 feet long passage/rasta as no man's land/public road and on such report of Circle Officer, the learned SDM initiated a proceeding under Section 147 of the CrPC in respect of land 8 feet wide and 40 feet long and other encroachment made by the petitioner. Learned counsel further submitted that the petitioner in this case has been trying to challenge the recalling of orders passed by learned Single Judge in contempt proceeding before this Bench which cannot be looked into by this Court. Moreover, the question over validity of the order passed by the learned Single Judge has already been



raised before the Hon'ble Division Bench in M.A. No. 570 of 2023 which is pending for adjudication. On this ground alone, the present revision petition is fit to be dismissed. Learned counsel further submitted that since the order dated 19.04.2023 passed in Misc. Case No. 1084(M) of 2022 was *ex-parte* and there was error in record and for this reason, the learned Single Judge directed learned SDM, Patna Sadar to make necessary correction and to pass a fresh order after hearing both the parties. Hence, the order passed by the learned SDM is not without jurisdiction. Learned counsel further submitted that the allegation of not leaving 2 feet wide land towards north of his boundary against opposite party no. 7 is incorrect as he has left 2 feet towards north of his boundary whereas the petitioner has not left any such land as claimed by him towards north of his house over the boundary of opposite party no. 7. Learned counsel further submitted that there is no manipulation in the record of learned SDM, Patna Sadar and as it was only a typographical error in date of the order and the same was corrected. Learned counsel further submitted that the submission regarding report of DCLR not being taken into consideration is not of any significance as the DCLR did not make enquiry in presence of opposite party no. 7 and hence, his



report has no legal force. Learned counsel reiterated that there is no question of learned SDM not following the provisions of Section 362 of the CrPC. The learned SDM passed the order in compliance of orders of learned Single Judge of this Court in M.J.C. No. 872 of 2023. Once this Court came to a finding that the order passed by the learned SDM was without hearing of opposite party no. 7 and there was error in records, the learned Single Judge rightly directed learned SDM to pass order afresh after hearing both the parties. Therefore, there is no illegality in the impugned order. Learned counsel further submits that the petitioner has failed to show any irregularity or impropriety in passing the impugned order by learned SDM and thus, the criminal revision petition is not maintainable.

8. Learned counsel appearing on behalf of opposite party nos. 1, 2, 4 and 5 supported the contention of opposite party no. 7. Learned counsel further submitted that when the dispute was brought to the notice of the State authorities, the matter was enquired into and it was found that the dispute between the parties is over the wall constructed on the western side by the petitioner and also for roof constructed over the road in the northern side by the petitioner. Therefore, the proceeding under Section 147 of the CrPC was initiated and



order dated 19.04.2023 was passed. However, in M.J.C. No. 872 of 2023, learned Single Judge directed learned SDM to take corrective steps in accordance with law and pass a fresh order after hearing both the parties. In compliance thereof, learned SDM, Patna Sadar passed the impugned order after hearing the parties and considering all the facts on record. The said order is a speaking order. As there is no supportive document for 8 feet x 40 feet land situated in the western boundary of opposite party no. 7, the learned S.D.M. directed that till the matter is decided with regard to the right and title of the said land both parties may use as Rasta (passage). Therefore, the order of the learned SDM does not suffer from any infirmity.

9. By way of reply, learned counsel for the petitioner submitted that it is not the petitioner but opposite party no. 7 who has made misleading statement and false submission before this Court. When the petitioner appeared *suo motu* in C.W.J.C. No. 224 of 2022 on 11.07.2022 then how it was possible that this Court directed the petitioner to produce the document as claimed by opposite party no. 7 and the petitioner failed to show the documents. Learned counsel further submitted that from the notice issued under Section 147 of the CrPC it is clear that the dispute was over the construction of



Chhajja in the northern boundary of the land of opposite party no. 7 over proposed 4 feet road. But the learned SDM started enquiry in other parts of land including the raiyati land of this petitioner. There is no 40 feet x 8 feet passage/rasta on the western boundary rather it has been mentioned in the sale of opposite party no. 7 Jhauri Paswan and others. On the other hand, sale deed specifically stated that on the northern side, both the opposite party no. 7 and petitioner would leave 2 feet from their respective share which would be utilized as common passage and it was mentioned in the sale deed that both sides may open doors and windows including Chhajja in that 4 feet of land. For this reason, the opposite party no. 7 has deliberately not brought his sale deed on record. Learned counsel further submitted that the opposite party no. 7 has been taking advantage of interim orders passed by the learned Single Judge in C.W.J.C. No. 224 of 2022 in which final orders have been passed on 03.01.2023 and thus, the interim orders merged with the final order, wherein the parties were directed to file their show cause before the SDM who was directed to conclude the proceeding within a period of two months. Accordingly, the learned SDM disposed of the proceeding. Therefore, passing fresh orders is contrary to the provisions of law and is also



against the facts on record.

10. I have given my thoughtful consideration to the rival submission of the parties. I would like to first take up the prayer of the petitioner about making a false averment by opposite party no. 7 in paragraph no. 8 of counter affidavit. The opposite party no. 7 has submitted as under:-

*"That in reply to the statements made in paragraph no. 5 to 7, 7(a) to 7(e) and 8 of the Revision petition it is stated that same part of the encroachment was removed under the supervision and control of the District Magistrate, Patna, Circle Officer, Sadar Patna with the help of S.H.O. Jakkanpur police station and magistrate also. In this context it is relevant to mention that while the Hon'ble court was hearing the matter repeatedly directed the petitioner to show the documents related to the encroached land but he failed to produce any document before this Hon'ble court. Not only that on 07.07.2023 the District Magistrate, Patna along with A.D.M. Revenue Circle Officer, Patna Sadar, Revenue inspector and Revenue Circle Patna Sadar and the police team of Jakkanpur police station after making enquiry and measurement of the land in question also requested the petitioner to produce the documents in respect of*



*encroached lands but since he had/has no documents to justify the encroached land of his own this is why the D.M. Patna directed the C.O. Patna Sadar for initiating a proceeding u/s 147 Cr.P.C. for declaring 8 feet wide and 40 feet long passage/rasta as No man's land/public road and on the report of C.O. Patna Sadar the court of learned SDM initiated a proceeding u/s 147 Cr.P.C. in respect of the land 8 feet wide and 40 feet long passage/rasta and other encroachment made by the petitioner."*

11. It is apparent from paragraph 8 the opposite party no. 7 has not mentioned any date when the learned Co-ordinate Bench hearing the matter directed the petitioner to show the document related to the land in dispute. Only contention of the petitioner is that he appeared in the case on 11.07.2022 so there was no occasion for the learned Co-ordinate Bench to direct him to produce document. I think this submission is fallacious. If C.W.J.C. No. 224 of 2022 was finally disposed of on 03.01.2023 and the petitioner appeared on 11.07.2022, nothing has been brought on record to support the contention of the petitioner that during this period he was never directed to produce the documents of land in dispute. It is also pertinent to take note of the fact that the petitioner does not



claim that he produced the documents for the land in dispute before the learned District Magistrate and other officials on 07.07.2022 when they went for making enquiry in compliance of orders of learned Co-ordinate Bench. Therefore, such submission by the petitioner only reflects the personal view of the petitioner and is bereft of material fact to infer false submission on behalf of opposite party no. 7 to initiate any proceeding against him. Hence, this prayer of the petitioner is rejected.

12. Challenge to the impugned order dated 25.06.2023, on some other aspects, does not go into the root of the matter as under the revisional jurisdiction this Court is not supposed to re-appreciate the facts to take a different view and any order could be assailed only on the ground of illegality, irregularity or impropriety manifest on the face of record. For this reason, irregularity in date of order might be a typographical error and the order sheet dated 27.06.2023 of the learned SDM regarding correction of order sheet could be taken on its face value.

13. So far as the challenge to the impugned order dated 26.06.2023 is concerned, the same is mainly on three grounds. Firstly it is on the ground that the learned SDM has no



power to recall/review its order and secondly also on the ground that the learned SDM travelled beyond the subject matter as notice was issued only for construction of Chhajja over proposed 4 feet passage/rasta. Apart from that the order has also been assailed on the ground that no satisfaction has been recorded by the learned SDM that such dispute between the parties was likely to cause a breach of peace.

14. The question of recall/review the impugned order by learned SDM, Patna Sadar does not arise in the present case because the subsequent order dated 26.06.2023 has been passed under the directions of this Court. If in the complaint petition bearing M.J.C. No. 872 of 2023, the learned Single Judge of this Court directed the learned SDM, Patna Sadar to pass a fresh order after hearing the parties, by implication order dated 19.04.2023 stood set aside and there being no order, the learned SDM rightly proceeded in the matter. Moreover, the subordinate authority is bound to obey the orders of superior court and whatever may be the contention of the petitioner about order of the Co-ordinate Bench not being proper or just, the same could be decided on merit only in appeal against such order and the learned SDM has no business to consider any submission made by the petitioner before it in this regard.



Therefore, the impugned order could not be faulted on the point that the learned SDM reviewed/recalled its order.

15. Further, challenge to the impugned order, on the ground of notice not containing the dispute over 40 feet x 8 feet passage in the western boundary of opposite party no. 7, is also not sustainable. Notice could not be encyclopedic containing all the details. For examining the dispute, the contention of opposite party no. 7 before the State authorities would be relevant. From the document annexed in the writ petition especially the site report, it is apparent that the opposite party no. 7 claimed the boundary wall erected by the petitioner on his western boundary to be encroachment whereas the petitioner claimed it to be his raiyati land. Apart from the allegation of opposite party no. 7 that the petitioner constructed Chhajja on the proposed 4 feet passage which was claimed to be his own land by the petitioner. This site report is dated 07.07.2022. Thereafter, notice was issued on 08.07.2022. So, it could be safely presumed that the dispute over passage on northern boundary and the western boundary was already before the learned SDM though notice issued under Section 147 of the CrPC dated 08.07.2022 did not contain the description of the complete dispute which is quite understandable as the notices



are issued containing only brief facts as is general practice. Therefore, finding fault with the impugned order even on this ground is not sustainable.

16. Thereafter, the challenge to the impugned order is also on the ground of non-compliance of other procedural aspects as well as on the ground that no satisfaction has been recorded by learned SDM that the dispute between the parties was likely to cause a breach of peace. Now, Section 147 of the CrPC reads as under:-

***"147. Dispute concerning right of use of land or water.- (1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.***

*Explanation.- The expression "land or water" has the meaning given to it in sub-section (2) of Section 145.*

*(2) The Magistrate shall then peruse*



*the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.*

*(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.*

*(4) When in any proceedings commenced under Sub-Section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right to user of land or water, he may, after “recording his reasons, continue with the proceedings as if they had been commenced under*



*Sub-Section (1); and when in any proceedings commenced under Sub-Section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under Sub-Section(1) of section 145."*

Applying the proviso to the facts of the case it is apparent that the learned SDM failed to record his satisfaction that the dispute was likely to cause a breach of peace. The impugned order does not contain the grounds of learned SDM being satisfied about existence of a dispute likely to cause a breach of peace and for this reason, the impugned order cannot be sustained.

17. I further find that the impugned order is also not sustainable for the reason that the learned SDM has failed to record the grounds satisfying the proviso to Section 147(3) of the Code as while recording the satisfaction that there existed a dispute likely to cause a breach of peace, the learned SDM was also required to record that right of user has been exercised within a period of three months before the receipt under sub-section (1) of the report of a police officer or other information leading to institution of the enquiry as contemplated.

18. On these two grounds, I am of the considered



opinion that the impugned order suffers from material irregularity and therefore, could not be sustained and hence, the order dated 26.06.2023 passed by learned SDM, Patna Sadar, Patna in Misc. Case No. 1084(M) of 2022 is set aside.

19. Accordingly, the present revision petition is allowed.

20. However, it is made clear that the learned SDM may pass appropriate orders in future if situation so warrants.

**(Arun Kumar Jha, J)**

DKS/-

AFR/NAFR	AFR
CAV DATE	05.01.2026
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