

## Prabhu And Ors. vs Satya Narain on 29 July, 1953

**Equivalent citations: AIR1954ALL38, AIR 1954 ALLAHABAD 38**

ORDER

Randhir Singh, J.

1. This is a reference by the Additional Sessions Judge, Bahraich, recommending that an order passed by a Magistrate first class under Section 133, Cr. P. C., be set aside.

2. It appears that Prabhu and others made an application under Section 133, Cr. P. C., against Sat Narain praying that proceedings against Sat Narain be taken under Section 133, Cr. P. C., as he had obstructed the way which lay through plots Nos. 2154 and 3717 of village Sheikhdaher, pargana Rakharpur, district Bahraich. Thereupon a conditional order was passed under Section 133, Cr. P. C., and notice was issued to Sat Narain to show cause why he should not be ordered to remove the obstruction. Sat Narain appeared before the Magistrate and alleged that there was no public way on any of the plots in dispute and that Prabhu and others had no right to maintain the application. The learned Magistrate then held an inquiry and made his order absolute in respect of plot No. 2154 but rejected the prayer in respect of plot No. 3717. He held that there had been no obstruction on the way which existed on the latter plot. Both the parties went in revision. It was contended on behalf of Sat Narain that the procedure adopted by the learned Magistrate was not in accordance with law inasmuch as no inquiry had been made under Section 139A, Cr. P. C. The Additional Sessions Judge has agreed with the contention of Sat Narain and has made the reference.

3. The judgment of the Magistrate shows that he did not proceed according to law in this case. Section 139A Cr. P. C. enjoins that there should be an inquiry, if a person to whom notice is issued comes forward and denies the existence of a right of public way on the land in respect of which obstruction is alleged. In this case Sat Narain had definitely denied the existence of a public way on the two plots in dispute. It was, therefore, the duty of the learned Magistrate to have enquired and found out if there was reliable evidence in support of the denial made by Sat Narain. If he had then come to the conclusion that there was no reliable evidence in support of the denial, it was open to him to proceed further with the inquiry and then make his final order. It appears from the record that some evidence was adduced by Sat Narain in support of the denial of the existence of a public way. The learned Magistrate should have, therefore, given a finding on this point before proceeding further. If he found that there was reliable evidence in support of the denial, the only course open to him was to stay the proceedings till the matter of the existence of such right had been decided by a competent Civil Court. The view taken by the Additional Sessions Judge, therefore, appears to be correct.

4. As a result I accept the reference made by the Additional Sessions Judge and set aside the order passed by the learned Magistrate. The case shall be sent back to the Court of the Magistrate, who

will re-start the proceedings from the stage after preliminary conditional order had been made under Section 133 Cr. P. C. against Sat Narain. He will make an inquiry if there was, in his opinion, reliable evidence in support of the denial of the right of way and then proceed according to law.