

Rekhai Singh vs The State Through Ram Narayan Singh on 17 September, 1951

Equivalent citations: AIR1953ALL466, AIR 1953 ALLAHABAD 466

ORDER

Agarwala, J.

1. This is an application in revision against an order of a Magistrate of Faizabad making a conditional order under Section 133, Cr. P. C. absolute and ordering the applicant to remove certain constructions made by him upon an alleged passage.
2. Ram Narain Singh, opposite party, made an application under Section 133, Cr. P. C. against the-applicant Rikhai Singh and one Srimati Dulhin Kuar on the allegation that Rikhai Singh and Dulhin Kuar had made certain constructions on a public road in village Chachikpur. The learned Magistrate called for a report from Sadar Kanun-go, Minjhaura. In his report the Kanungo stated that both Rikhai Singh and Dulhin Kuar had extended their houses which were on the two sides of the public road and had thereby narrowed the width of the passage with the result that great inconvenience had been caused to the public. A conditional order was made by the learned Magistrate calling upon Rikhai Singh and Dulhin Kuar to remove the construction and encroachments, from the public way & to show cause if they had any objection against the order by a certain date. Rikhai Singh and Dulhin Kuar filed written statements. Rikhai Singh's case was that he had mere-ly put a thatch on the Osara which had been in existence for a long time and that the new constructions had been made by the other opposite party, Dulhin Kuar, on the other side of the road, Dulhin Kuar pleaded that she had erected only mud walla on her own land and that it was Rikhai Single who had made the constructions and narrowed the passage.
3. From these pleadings it was clear that Rikhal Singh denied the existence of right of way over the portion of land in his possession while Dulhin Kuar denied the existence of a right of way over the portion of land in her possession. This was, therefore, a denial of a right of way on the portions of land alleged to have been encroached upon by these two parties and the case fell within the purview of Section 139 (139A ?), Criminal P. C., vide --'Mohammad Jan v. State', Cri. Revn. No. 1497 of 1949 (All) (A), decided by a -Bench of this Court on 24-1-1950,
4. The learned Magistrate instead of proceeding under Sec. 139A, Cr. P. C. took the statement of Rikhai Singh's son and made the order absolute upon the finding that both Rikhai Singh and Dul-hin Kuar had made encroachments on the public road. This procedure was clearly erroneous. The learned Magistrate should have first proceeded to find whether there was reliable evidence in

support of the denial of the right of way, and then, if he found that there was no such reliable evidence, he should have proceeded further to find if any encroachment had been made on the public way. It is conceded by learned counsel for the complainant that the Magistrate did not follow the proper procedure.

5. I, therefore, set aside the order of the learned Magistrate dated 20-11-1950, and direct the learned Magistrate to decide the case afresh in accordance with law.