

**IN THE COURT OF THE SESSIONS JUDGE :: NALBARI**

Present: Smti S. Bhuyan.  
Sessions Judge,  
Nalbari.

**(Criminal Revision Case No. 37/19)**

**Revision u/s- 397/398 CrPC against the order dated  
06/09/2019 passed learned Executive Magistrate,  
Nalbari in connection with Misc Case No. 174<sup>M</sup>/2019  
u/s- 107 CrPC.**

**Sri Biplab Sarkar**

S/o- Late Tapan Sarkar

R/o- village Namati,

P.O. - Namati Hati

Dist & PS - Nalbari, Assam ..... Revisionist/ 1<sup>st</sup> party.

**-Versus-**

**Sri Milan Sarkar**

**Sri Phulan Sarkar**

**Sri Gautam Sarkar**

S/o- Late Sunil Sarkar

R/o- village Namati,

P.O. - Namati Hati

Dist & PS - Nalbari, Assam..... Opp Party/ 2nd party

**Advocates appeared:-**

For the Revisionist : Mr. Paban Das, Advocate.

For the Opp. Party : None appeared

Date of argument : 16-06-2020

Date of judgment : 30-06-2020

**JUDGMENT**

1. The instant revision has been preferred u/s-397/398 Cr.P.C by Sri Biplab Sarkar being aggrieved with the impugned order dated 06/09/2019 passed by learned

Executive Magistrate, Nalbari in connection with Misc Case No. 174<sup>M</sup>/19 u/s- 107 CrPC.

2. Fact leading to the revision is that Biplab Sarkar, revisionist/ 1<sup>st</sup> party filed petition u/s- 397/399 CrPC before the Executive Magistrate, Nalbari stating that he is presently staying at Pandu Tiniali, Maligaon in a rented house but he had landed paternal property at village Namati in Nalbari District and he is looking after the said property and possessing the same by cultivating and is paying revenue of the land. At the time of preparing the said land fit for cultivation, 2<sup>nd</sup> party namely Milan Sarkar, Phulan Sarkar and Gautam Sarkar in a group gave threatening to him and his family members to finish their life if they come to the disputed land and 2<sup>nd</sup> party wanted to cultivate in the said land without any condition and on 04/05/19 2<sup>nd</sup> party taking advantage of 1<sup>st</sup> party as a single person made conspiracy to take possession of the land and out of fear of 2<sup>nd</sup> party, it became impossible to visit his paternal land. On 14/05/19 when 1<sup>st</sup> party wanted to enter in to his paternal property 2<sup>nd</sup> party being armed with weapon restrained him and on 15/05/19 gave threatening to finish his life if he did not give the land to them and he prays to draw up a proceeding u/s- 107 CrPC and to give direction to 2<sup>nd</sup> party to furnish bond.

3. Learned Executive Magistrate took up the petition on 02/07/19, forwarded the petition to the O/C, Nalbari calling for a report from police and on receipt of report from police learned Executive Magistrate initiated a proceeding u/s- 107 CrPC, issued notice to parties, called for W/S from 2<sup>nd</sup> party. 2<sup>nd</sup> party on receipt of notice appeared before the learned Executive Magistrate, submitted W/S on 09/08/19 and denied the case. The plea taken by 2<sup>nd</sup> party is that Late Tapan Sarkar, father of 1<sup>st</sup> party, during his life time about 25 years

back sold his land to 2<sup>nd</sup> party No 1 and 3 namely Milan Sarkar and Gautam Sarkar and delivered possession to them and since then Milan Sarkar made a fishery and Gautam Sarkar cultivated in his share of the said land but late Tapan Sarkar did not register the sale deed and after death of Tapan Sarkar 2<sup>nd</sup> party made request to 1<sup>st</sup> party to execute registered sale deed in their favour but 1<sup>st</sup> party for his wrongful gain harassing 2<sup>nd</sup> party and prays for disposal.

4. Revisionist is represented by his engaged counsel. None appeared for the opposite party. I have heard learned revisionist counsel in the virtual court through Jitsi platform and scrutinized the revision petition as well as trial court case to arrive at a just decision.

**5. Points for determination**

- i) Whether there is any apprehension of breach of peace between the parties regarding land disputed?

6. Learned counsel appearing for the revisionist submitted that the order dated 06/09/19 passed by the learned trial court is erroneous, bad in law and learned trial court has dropped the proceeding without taking evidence of the 1<sup>st</sup> party. Hence, prays for setting aside the impugned order passed by the learned trial court.

7. I have scrutinized the revision petition, main petition filed u/s- 107 CrPC and trial court case record. On scrutiny it is seen that on 15/05/19 1<sup>st</sup> party filed petition before the Executive Magistrate, Nalbari, on the same date Executive Magistrate forwarded the petition to the O/C, Nalbari to conduct an inquiry and to submit report. O/C, Nalbari entrusted ASI Lokman Ali Ahmed for the inquiry and accordingly ASI Lokman Ali Ahmed after making inquiry

submitted report dated 30/05/19. On receipt of report from police, learned Executive Magistrate vide order dated 03/07/19 took up the petition and being satisfied drawn up a proceeding u/s- 107 CrPC, issued notice to the parties to appear before learned trial court 2<sup>nd</sup> party were asked to show cause as to why they should not be ordered to execute the bond and fixed the case for W/S by 2<sup>nd</sup> party. 2<sup>nd</sup> party submitted W/S and posted the case for hearing. It is seen from the order that case is not fixed for evidence as stated by the revisionist in para No.3 of the revision petition. From the record and materials it is seen that present revisionist also filed another petition in the court of learned CJM, Nalbari which was registered as Case No. 139<sup>C</sup>/19 against the present opposite party. Learned trial court after hearing the counsel for both sides vide impugned order dated 06/09/19 dropped the proceeding holding that there is no apprehension of breach of peace between the parties regarding possession of disputed land.

8. On scrutiny of the main petition filed by 1<sup>st</sup> party it is seen that though 1<sup>st</sup> party claimed that there is breach of peace regarding possession of land yet there is no schedule of disputed land mentioned by the petitioner and learned Executive Magistrate after hearing the counsel for both sides dropped the proceeding when there is no material available before the learned trial court of apprehension of breach of peace between the parties.

9. In the light of the above discussion, I do not find any infirmity and illegality in the impugned order dated 06/09/2019 passed by the learned trial court and I hold that learned trial court has rightly passed the order in accordance with law. Accordingly, order dated 06/09/2019 passed in

Misc Case No. 174<sup>M</sup>/2019 by the learned trial court is hereby upheld and revision is dismissed being devoid of merit. However, no cost to the parties.

10. Send down the trial court record with a copy of this court judgment to the learned trial court immediately.

11. Judgment delivered under hand and seal of this court on this 30<sup>th</sup> day of June, 2020 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Typed by  
Jitumani Talukdar  
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