

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**C.P.No.D-2873 of 2017**

1. For orders on office objection
2. For hearing of MA-11432/17
3. For hearing of main case.

**Before;**

Mr. Justice Irshad Ali Shah  
Mr. Justice Amjad Ali Sahito

**Petitioners:** Abdul Samad, Abdul Ghaffar and Fateh Muhammad, all sons of Muhammad Shafi, Through Mian Taj Muhammad Keerio, Advocate

**Respondent No.1:** Through Atta Muhammad Shaikh, Advocate

**The State:** Mr. Muhammad Ismail Bhutto, Add:A.G.

**Date of hearing:** **02.12.2019**

**Date of decision:** **02.12.2019**

**ORDER**

**IRSHAD ALI SHAH, J.** The facts in brief necessary for disposal of instant constitutional petition are that the private respondent by making an application u/s 133 Cr.P.C prayed for the following relief.

*“That this Honourable Court may be pleased to remove the construction of respondents No.1 to 03 from the Rasti and direct them not to make any constructions in the Rast.”*

2. Learned trial Magistrate after enquiry dismissed the said application vide order dated 17.05.2017, which was impugned by the private respondent by way of filing a Revision Application. It was allowed by learned Ist. Additional Sessions Judge, Sanghar, whereby concerned Mukhtiarkar concerned was directed to remove the subject encroachment. It was in these circumstances, the petitioners have brought the instant petition before this Court.

3. It is contended by learned counsel for the petitioners that the issue of encroachment could not be dubbed as a nuisance, learned Revisional Court by ordering the removal of encroachment has committed wrong which could only be made right by this court.

4. Learned A.A.G did not support the order of learned Revisional Court.

5. We have considered the above arguments and perused the record.

6. Apparently, the dispute between the parties is over the construction which is alleged to have been raised by the petitioners by making encroachment. Issue of encroachment and illegal construction (if any) could hardly be dubbed as a nuisance. Such controversy being factual in its nature ought not to have been resolved by learned Revisional Court by directing the concerned Mukhtiarkar to remove such encroachment, in summary manner. In these premises order of learned Revisional Court could not be sustained, it is set-aside.

7. The instant constitutional petition is disposed of accordingly.

JUDGE

JUDGE