HIGH COURT OF SINDH, CIRCUIT COURT MIRPUR KHAS

Criminal Revision Application No.S-19 of 2026

Before:
Mr. Justice Zulfiqar Ali Sangi

Applicants: 1. Muhabato son of Raso Kolhi,
2. Peer Raj son of Karmano Kolhi,
3. Shanker son of Dodo,
4. Bero son of Dodo,
5. Ramo son of Bhoro,
6. Chetan son of Dano,
Through Mr. Anil Kumar Rathore, Advocate

Official Respondents: 1. Deputy Commissioner, Tharparkar at Mithi
2. The Senior Superintendent of Police, Tharparkar at Mithi
3. Assistant Commissioner, Nangarparkar,
4. Mukhtiarkar Revenue, Nangarparkar,
5. SHO PS Nangarparkar District Tharparkar @ Mithi.
6. The State.
Through Mr. Ghulam Abbas Dalwani, D.P.G

Private Respondents: 1. Rajo son of Walo,
2. Narsing son of Rajo,
3. Karmashi son of Rajo,
4. Partab son of Gomon,
5.Gomon son of Walo,
6.Arando son of Gomon,
7.Guneso son of Rajo,
8.Lachman son of Rajo,
9.Lakho son of Choto,
10.Kasho son of Patho,
11.Parbo son of Raju
Respondent No.2 through Mr. Afzal Kareem Virk Advocate.

Date of hearing: 16.11.2026.
Date of Order: 16.11.2026.

O R D E R

Zulfiqar Ali Sangi J.- Through this criminal revision application, the applicants have called in question the legality and propriety of the order dated 14.05.2025, passed by the learned Civil Judge & Judicial Magistrate, Nagarparkar, in Criminal Miscellaneous Application No.07 of 2024, whereby the application filed by the applicants under Section 133 Cr.P.C. for removal of alleged public nuisance was dismissed and the conditional order dated 20.11.2024 was recalled. The applicants

have also assailed the subsequent revisional order dated 19.08.2025, passed by the learned Additional Sessions Judge-I, Tharparkar at Mithi, whereby their criminal revision application was dismissed.

2. Precisely, the case of the applicants is that the private respondents have unlawfully occupied government land and obstructed certain pathways allegedly been used by the applicants and other inhabitants of the adjoining villages for access to various localities, water resources and other places. It is further alleged that the construction of huts and other structures by the private respondents has obstructed the natural flow of rainwater descending from the mountains, thereby causing inconvenience to the inhabitants of the locality. On such allegations, the applicants approached the learned Magistrate under Section 133 Cr.P.C., seeking removal of the alleged public nuisance.

3. The record reflects that the application was initially dismissed by the learned Magistrate vide order dated 11.05.2024. The applicants challenged the said order through Criminal Revision Application No.05/2024, which was allowed by the learned District & Sessions Judge, Tharparkar at Mithi, vide order dated 05.11.2024, with directions to the learned Magistrate to afford both parties an opportunity to produce evidence and thereafter decide the matter afresh in accordance with the law. In compliance with the said directions, the learned Magistrate passed a conditional order dated 20.11.2024, entertained objections filed by the private respondents, recorded evidence of the parties and their respective witnesses, and after hearing the learned counsel for the parties, dismissed the application vide order dated 14.05.2025, recalling the conditional order. The applicants challenged the said order before the learned Additional Sessions Judge-I, Tharparkar at Mithi, but remained unsuccessful, as their revision application was dismissed vide order dated 19.08.2025. Hence, the present proceedings.

4. Learned counsel for the applicants contended that both the subordinate courts have failed to appreciate the material available on record in its true perspective. It was argued that the reports submitted by the Mukhtiarkar Revenue, SHO concerned and DSP/SDPO Chachro sufficiently establish that the private respondents have encroached upon government land and obstructed public pathways, cattle passages, Gauchar land and natural

watercourses. It was further contended that the private respondents, during their cross-examination, made material admissions regarding the existence and use of the disputed pathways by the inhabitants of different villages, which were not properly considered by the learned Magistrate. According to learned counsel, the proceedings under Section 133 Cr.P.C. are intended to provide an expeditious remedy against public nuisance, and the absence of other villagers as applicants could not, by itself, defeat a genuine claim concerning public rights. He, therefore, prayed that the impugned orders be set aside and the conditional order dated 20.11.2024 be made absolute.

5. Conversely, learned counsel for the private respondents supported the impugned orders and contended that the proceedings under Section 133 Cr.P.C. have been initiated as a consequence of previous enmity and a private dispute between the parties relating to possession and occupation of land. It was argued that the applicants failed to establish the existence of any public pathway, much less its obstruction by the private respondents, through any sanctioned revenue record, village map, site plan or independent evidence. It was further submitted that the alleged obstruction has not been substantiated by any independent inhabitant of the locality or any person from the other villages purportedly affected by it. Learned DPG also supported the impugned orders and prayed for dismissal of the revision application.

6. I have heard the learned counsel for the parties and the learned DPG and have carefully examined the available record, including the evidence recorded by the learned Magistrate, the reports submitted by the concerned revenue and police authorities and the impugned orders passed by both the subordinate courts.

7. At the outset, it would be appropriate to observe that the jurisdiction of this Court in revisional proceedings is supervisory and is intended to examine the correctness, legality or propriety of the findings, sentence or order passed by the subordinate court, as well as the regularity of the proceedings before it. Such jurisdiction is not equivalent to that of an appellate court and does not ordinarily warrant interference merely because another view of the evidence may also be possible. Interference is justified where the impugned order suffers from patent illegality, material irregularity, jurisdictional defect, misreading or non-reading of material evidence, or where the

findings recorded are perverse or manifestly unreasonable. The revisional jurisdiction is not meant to provide an opportunity for a party to secure a fresh appraisal of the evidence merely because the conclusions drawn by the subordinate courts are unfavourable to it.

8. The scope and object of Section 133 Cr.P.C. also require consideration. The said provision empowers a Magistrate to make a conditional order for the removal of a public nuisance in the circumstances specified therein, including an unlawful obstruction or nuisance in any public place or way, river or channel which is or may lawfully be used by the public. The provision is essentially preventive in nature and is intended to protect the public at large from an existing nuisance affecting public convenience, safety or health. It is not intended to adjudicate complicated questions of title, ownership, possession or private easementary rights between rival individuals. The essential requirement for invoking such jurisdiction is the existence of a nuisance affecting the public or a sufficiently identifiable section of the community, rather than a mere private grievance or dispute between individuals.

9. In the present case, the applicants have alleged that the private respondents obstructed pathways connecting their village with various adjoining villages and also interfered with the natural drainage of rainwater. However, the question requiring determination was not merely whether the parties had a dispute concerning the occupation of government land, but whether the applicants had established, through legally admissible and reliable evidence, that the acts complained of constituted a public nuisance within the contemplation of Section 133 Cr.P.C. A perusal of the evidence recorded by the learned Magistrate reveals that applicants No.1 to 5 appeared as witnesses and also examined two supporting witnesses, namely Nago and Partab. Their depositions were subjected to cross-examination. The evidence further reflects that the applicants admitted the existence of a previous dispute between the parties dating back to the year 2020. They also acknowledged that the village in question is inhabited by persons belonging to different castes and communities and that a considerable number of houses exist in the locality. Notwithstanding the assertion that the alleged obstruction affects several adjoining villages and their inhabitants, no independent resident from any of those villages was produced to

substantiate the alleged closure of public pathways or inconvenience caused to the community at large.

10. It is also significant that the applicants failed to produce any authenticated revenue record, sanctioned village map, site plan or other reliable documentary material identifying the precise location, alignment and public character of the pathways allegedly obstructed by the private respondents. Mere assertions regarding the existence of certain routes or their use by the applicants cannot, in the absence of reliable supporting material, be treated as conclusive proof of a public right or of an obstruction attracting the provisions of Section 133 Cr.P.C. The applicants were required to establish not only the existence of the alleged pathways but also the fact that the same were public ways or were lawfully available for public use and had actually been obstructed by the private respondents. The applicants have placed considerable reliance upon the reports submitted by the Mukhtiarkar Revenue, SHO concerned and DSP/SDPO Chachro. There can be no cavil with the proposition that reports prepared by public functionaries in the discharge of their official duties constitute relevant material for consideration by a court, subject to their admissibility and evidentiary value in the circumstances of each case. Nevertheless, such reports are not invariably conclusive proof of every factual assertion contained therein, nor do they dispense with the obligation of a party to establish the essential ingredients of its case through legally acceptable evidence. The evidentiary value of an official report has to be assessed in conjunction with the other material available on record.

11. In the instant matter, although the reports referred to by the applicants contain observations regarding the alleged occupation of government land, cattle passages and water routes, the learned Magistrate considered the same alongside the oral evidence produced by both sides. The learned Magistrate also noticed that the reports did not, when examined with the evidence as a whole, conclusively establish that a public pathway had been obstructed or that the alleged construction had caused common injury, danger or annoyance to the public at large. It is also apparent that the applicants did not examine the concerned revenue or police officials to substantiate the contents of the reports through their testimony and afford the opposite party an opportunity of cross-examination. In these

circumstances, the mere existence of such reports could not, by itself, establish the necessary ingredients of public nuisance.

12. Another important aspect of the matter is that the applicants and the private respondents admittedly have a previous history of dispute and are closely related to each other. The evidence recorded by the learned Magistrate indicates that the parties have remained at variance since an incident of altercation in the year 2020. Such previous enmity, by itself, would not be sufficient to discard the applicants' case if otherwise supported by independent and convincing evidence. However, when considered alongside the absence of independent inhabitants of the locality, the failure to produce documentary material identifying the alleged public pathways and the inability of the applicants to establish the precise nature and extent of the obstruction, the previous dispute assumes relevance in assessing the bona fides and nature of the proceedings.

13. It is equally important to note that the private respondents, while appearing as witnesses, consistently denied having obstructed any public pathway or watercourse. Although their evidence also required scrutiny in the light of the entire record, the burden of establishing the facts constituting the alleged public nuisance remained upon the applicants. In terms of Article 117 of the Qanun-e-Shahadat Order, 1984, the burden of proof lies upon the party who desires the Court to give judgment as to any legal right or liability dependent upon the existence of facts which that party asserts. The applicants, therefore, could not succeed merely by pointing out deficiencies in the defence version; rather, they were required to establish their own case through affirmative and reliable evidence.

14. The contention that the absence of other villagers as applicants could not defeat proceedings under Section 133 Cr.P.C. is, in principle, correct to the extent that the jurisdiction conferred by the said provision is not dependent upon the number of complainants. A public nuisance may be brought to the notice of a competent Magistrate by an individual, provided the alleged act falls within the scope of the provision and the requisite public injury or obstruction is established. However, the absence of independent persons from the localities allegedly affected becomes a relevant evidentiary circumstance where the applicants specifically claim that pathways used by several villages have been obstructed, yet no person from

those villages appears to support such assertion. Thus, the failure of the applicants to produce independent supporting evidence cannot be ignored in the overall assessment of their case. The principles laid down in the cases of ***Zafar Hussain v. Muhammad Amin and others (1990 PCr.LJ 1928), Ghulam Muhammad v. Painda Rahman and others (PLD 2012 Peshawar 167)*** and ***Mst. Sakina v. Habibur Rehman (PLD 1968 Peshawar 21)***, as referred to in the impugned proceedings, reinforce the distinction between a public nuisance and a private dispute. The proceedings under Section 133 Cr.P.C. are not intended to provide a forum for determining inter se proprietary rights or resolving disputes concerning possession of immovable property. The jurisdiction is attracted only where the nature of the alleged act falls within the statutory parameters and the public at large, or a section of the community, is exposed to common injury, danger or annoyance.

15. In the present case, the applicants have not been able to demonstrate through reliable evidence that the alleged construction by the private respondents has resulted in the closure of any established public pathway or has materially obstructed the natural flow of rainwater so as to constitute a public nuisance. Nor have they established that the alleged acts have caused common injury, danger or annoyance to the inhabitants of the locality within the meaning of Section 268 PPC. The material available on record, when considered in its entirety, indicates that the controversy substantially relates to the occupation and use of land between the contesting parties, who admittedly have a history of previous disputes. It is also necessary to clarify that the question whether the private respondents have unlawfully occupied any government land or whether such occupation is liable to be removed under the applicable revenue or encroachment laws is entirely distinct from the question of public nuisance under Section 133 Cr.P.C. The dismissal of the application under the said provision does not confer any proprietary right, title or lawful entitlement upon the private respondents in respect of the land allegedly occupied by them. Equally, the proceedings under Section 133 Cr.P.C. cannot be converted into an adjudication of title or possession. Any competent authority under the relevant revenue or encroachment laws remains at liberty to examine the matter and take action strictly in accordance with law, after providing the persons concerned an opportunity of hearing, wherever required.

16. I have also examined the contention that the learned Magistrate failed to comply with the earlier revisional order dated 05.11.2024. The record, however, reveals that pursuant to the said order, the learned Magistrate afforded both parties an opportunity to file objections, produced their respective witnesses, subjected them to cross-examination and thereafter decided the application afresh on the basis of the evidence and material available on record. The earlier revisional order required a proper opportunity to both sides to produce evidence and a fresh decision in accordance with law; it did not mandate that the application must necessarily be allowed or that the conditional order must be made absolute. Thus, the mere fact that the ultimate conclusion was adverse to the applicants does not establish non-compliance with the directions of the revisional court. So far as the impugned order dated 19.08.2025 passed by the learned Additional Sessions Judge-I, Tharparkar at Mithi is concerned, the same reflects consideration of the material aspects of the controversy, particularly the admissions made by the applicants during cross-examination, the previous dispute between the parties, the absence of independent supporting witnesses and the failure to establish that the alleged pathways had been obstructed to the detriment of the public at large. The learned revisional court found no illegality or material irregularity in the order passed by the learned Magistrate warranting interference. On examination of the record, I find that the said conclusion is neither arbitrary nor perverse and is supported by the material available on record.

17. It is settled that where the subordinate courts have examined the evidence in its proper perspective and their findings are based upon a plausible appreciation of the material available on record, the revisional court should not substitute its own conclusions merely because another view may also be possible. In the present matter, the applicants have failed to identify any material illegality, jurisdictional defect, procedural irregularity or perversity in the concurrent conclusions recorded by the subordinate courts. The arguments advanced by learned counsel for the applicants essentially seek a fresh reappraisal of the evidence, which, in the circumstances of the case, does not furnish a sufficient ground for exercise of revisional jurisdiction.

18. For the foregoing reasons, I am of the considered view that the applicants have failed to establish any ground warranting interference

with the impugned orders. The order dated 14.05.2025 passed by the learned Civil Judge & Judicial Magistrate, Nagarparkar, as well as the subsequent revisional order dated 19.08.2025 passed by the learned Additional Sessions Judge-I, Tharparkar at Mithi, do not suffer from any illegality, material irregularity or jurisdictional defect calling for interference by this Court in exercise of its revisional jurisdiction. Consequently, the instant Criminal Revision Application, being devoid of merit, is hereby ***dismissed***. The impugned orders passed by the subordinate courts are maintained. However, it is clarified that this order shall not prejudice the right of the competent revenue or encroachment authorities to independently examine the question of any alleged encroachment upon government land and proceed strictly in accordance with law.

JUDGE