
(1999) 01 AHC CK 0006
In the Allahabad High Court
Case No : Criminal M.W.P. No. 13572 of 1989

Anita Tyre Retreading Works

APPELLANT

Vs

City Magistrate and Another

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 43
Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (1999) 1 ACR 417

Hon'ble Judges : R.K. Singh, J;B.K. Roy, J

Bench : Division Bench

Advocate : Ravi Kant, for the Appellant;

Judgement

B.K. Roy and R.K. Singh, JJ.—The Petitioner assails an order passed by the City Magistrate, Muzaffarnagar in Case No. 1/11 of 1988, u/s 133, Code of Criminal Procedure P.S. Nai Mandi, district Muzaffarnagar (as contained in Annexure-12) overruling its objection that he has no jurisdiction to decide the proceedings. In doing so, the learned Magistrate has placed reliance on a judgment/order dated 2.3.1987 of the Andhra Pradesh High Court in Criminal Misc. Petition No. 3028 of 1986, Messers Nagar Juna Paper Mills Limited v. Sub-Divisional Magistrate and Ors.

2. Sri Arvind Srivastava, learned Counsel appearing on behalf of the Petitioner, contended that Sri Shyam Singh Yadav, City Magistrate, Muzaffarnagar, who has passed the impugned order lacked jurisdiction to pass it inasmuch as he was not vested with any powers u/s 43 of the Air (Prevention and Control of Pollution) Act, 1981, and that at any rate, the powers having been conferred on a Judicial Magistrate u/s 133, Code of Criminal Procedure he lacks authority to decide the proceeding.

3. Sri Sudhir Jaiswal, learned standing counsel rebutted the submissions on behalf of the , Respondents.

4. In our view, both submissions of Mr. Srivastava are thoroughly misconceived.

4.1. Section 43 of the Air (Prevention and Control of Pollution) Act, 1981, deals with taking of the cognizance of the offences mentioned in the aforementioned Act. It has no bearing in regard to a public nuisance created u/s 133. Code of Criminal Procedure.

4.2 On a bare perusal of Section 133, Code of Criminal Procedure, it appears that the District Magistrate, Sub-Divisional Magistrate or any Executive Magistrate who has been specially empowered by the State, and not a Judicial Magistrate, can pass a conditional order for removal of public nuisance.

4.3 It is not the case of the Petitioner either in its pleading or through its learned Counsel Sri Srivastava that Sri Yadav, City Magistrate, Muzaffarnagar was not conferred power by the State Government to decide such a proceeding.

4.4 The Petitioner has failed to rebut the statutory presumption of correctness of the official acts attached with the order of the Magistrate.

4.5 The impugned order further shows that the proceeding was initiated on 3.2.1988 on the Inspection Report of the U.P. Pollution Control Board, Regional Office and Laboratory, Dehradun.

5. For the aforementioned reasons, this writ petition is dismissed.

6. The office is directed to hand over a copy of this order to Sri Sudhir Jaiswal, learned standing counsel, within a week for its communication to the authority concerned.