
(1999) 01 AHC CK 0106

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13572 of 1989

Anita Tyre Retreading Works

APPELLANT

Vs

The 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

Penal Code, 1860 (IPC) — Section 133

Citation : (1999) CriLJ 1874

Hon'ble Judges : Ram Kishore Singh, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Ravi Kant, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner assails an order passed by the City Magistrate, Muzaffarnagar in Case No. 1/11 of 1988, u/s 133 IPC, 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 Nagar Juna Paper Mills Limited v. Sub Divisional Magistrate.

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 Cr.P.C. he lacks authority to decide the proceeding.

3. Sri Sudbir Jalswal, 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 the cognizance of the offences mentioned in the aforementioned Act. It has no bearing in regard to a Public Nuisance created u/s 133 Cr.P.C.

4.2. On a bare perusal of Section 133, Cr.P.C. 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 3-2-1998 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.