

(1992) 07 PAT CK 0035

In the Patna High Court

Case No : Criminal Miscellaneous No. 4864 of 1992

Bajnath Prasad

APPELLANT

Vs

The District Magistrate Jehanabad and Others

RESPONDENT

Date of Decision : 30-07-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (1992) 2 PLJR 596

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. Despite several opportunities given to the counsel for the State, he has received no instruction and no counter affidavit has been filed on behalf of the State. It is stated by the learned Counsel for the State that a copy of the Court's earlier order was also sent to the District Magistrate Jehanabad but he has received no response.
3. In these circumstances, I proceed to dispose of the application after hearing the counsel for the State, Respondent No. 5 and the counsel for the Petitioner.
4. The Petitioner has mainly challenged the order of the District Magistrate (Annexure- 3) dated 20.7.1990 whereby the District Magistrate Respondent No. 1 has directed that police force be provided to the Executive Magistrate to evict the Petitioner from the premises in question. The order purports to give effect to the order dated 1.6.1990, whereby according to the facts narrated in the order, the authorities were directed to evict the Petitioner from the premises belonging to Respondent No. 4. Respondent No. 4 has served a copy of his show cause on the counsel for the Respondent No. 5 and the Petitioner as well as the State, but from the record it appears that he has not filed the same in Court. His counsel however, has not entered appearance and is not present to oppose the

application.

5. It appears that at the instance of Respondent No. 5, a proceeding was initiated against the Petitioner u/s 133 of the Code of Criminal Procedure in the court of Sub-divisional Magistrate, Jehanabad. It was alleged that on account of installation of a pulley in the premises occupied by the Petitioner, Respondent No. 5 was suffering nuisance caused by vibrations as a result of the operation of the Mill. He was, therefore, not in a position to carry on his work in the adjacent premises.

6. After hearing the parties, the said application was allowed by the Sub-divisional Magistrate by his order dated 12.4.1988 and he ordered the Petitioner to remove the pulley within three days and not to run the Mill unless the pulley was removed. The appeal against the order was rejected by the Sessions Judge and similarly an application was filed before this Court which was subsequently converted into a criminal writ case was also rejected on 26.2.90. Thereafter on 1.6.1990, the Sub-divisional Magistrate again passed an order (Annexure-1) whereby the Petitioner was directed to remove the pulley within one week.

7. The Petitioner contends that he has obeyed the order dated 1.6.1990, whereas Respondent No. 5 states that he has not done so. It appears that the Respondent No. 4 who is a clerk in the Jehanabad Collectorate made an application to the District Magistrate praying that he should evict the Petitioner from the premises in question and also recover the arrears of rent due from the Petitioner. It is evident that the order dated 1.6.1990 did not direct the Petitioner to be evicted from the premises in question. The only direction was to reserve the pulley from the premises so that the running of the Mill did not cause nuisance to the neighbours, including the Respondent No. 5.

8. Surprisingly, the District Magistrate by his order Annexure-3 which is impugned in the instant application has referred to the order dated 1.6.90 and has proceeded to direct that the aid of Police force be taken and the Petitioner be evicted from the premises in question Annexure-3 the impugned order passed by the District Magistrate is entirely without jurisdiction. A District Magistrate has no jurisdiction to entertain an application for eviction of a tenant on whatever grounds. So far the order dated 1.6.90 is concerned which was passed in a proceeding u/s 133 of the Code of Criminal Procedure, there was no direction to evict the Petitioner from the premises. The District Magistrate has not displayed any sense of responsibility in discharge of his duties. It is quite apparent that he has acted on an application made by Respondent No. 4 which he could not even have entertained. If Respondent No. 4 wanted his tenant to be evicted on the ground that he had defaulted in payment of rent or on any other ground, he ought to have approached the proper court having jurisdiction to entertain such an application. Surprisingly, he approached the District Magistrate and the District Magistrate after usurping the powers of the court purports to act as if he was implementing the order dated 1.6.1990 passed in a proceeding u/s 133 of the Code of Criminal Procedure. He did not purport to allow the application of

Respondent No. 4, but sought to achieve the same objective by misreading the order dated 1.6.1990 passed in the proceeding u/s 133 of the Code of Criminal Procedure and ordering eviction of the Petitioner. I have, therefore, no option but to quash the impugned order (Annexure-3) which is not only without jurisdiction but also passed in mala fide exercise of power.

9. Learned Counsel for the State submits (Sic)t since the Petitioner has already been evic(Sic)pursuant to Annexure-3, this writ petition (Sic) become infurctuous. The submission has be stated to be rejected. Where injustice results by reason of illegal orders passed by the authorities, this Court is not helpless in the (Sic)tter and it can always grant appropriate (Sic)ief in the interest of justice. In the instant (Sic)e I direct that the District Magistrate shall (Sic)hin three days of the date of receipt of by of this order in normal course, or upon vice of copy of this order upon him by the Petitioner, see to it that the Petitioner is put (Sic)ek in possession of the premises from which had been evicted.

10. It is a matter of some concern that (Sic) District Magistrate has acted in a high(Sic)nded manner, adversely affecting the rights a citizen. Such acts on the part pf the District Magistrate will not help to improve the ready grim situation that prevails in the (Sic)trict concerned. Rather it may give an pression to law abiding citizens that the law (Sic) no meaning and the authorities who are (Sic)ty bound to uphold and enforce the law are themselves bent upon misusing the powers (Sic)ited in them. I say so because this is not (Sic) first instance of its type and I have noticed (Sic)h action on the part of executive authorities in other cases as well. In these circumstances, this petition is allowed, Annexure-3 is (Sic)ashed and the District Magistrate, Jehanabad is directed to give effect to this order of the Court as earlier directed. The District Magistrate who passed the order shall pay personally a sum of Rs. 500/ (Rupees five hundred) by way of costs to the Petitioner. It made clear that I have not interfered with the order passed u/s 133 of the Code of Criminal Procedure which must be given effect.