

(1995) 03 SC CK 0087
In the Supreme Court Of India
Case No : SLP (Crl) No.2151 of 1989

C.A. Avarachan

APPELLANT

Vs

C.V. Sreenivasan and Another

RESPONDENT

Date of Decision : 23-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 138

Citation : (1995) 43 BLJR 921 : (1995) CriLJ 2682 : (1995) 2 Crimes 294 :
(1995) 5 JT 638 : (1995) 2 PLJR 1 : (1995) 2 SCALE 271 : (1995) 3 SCC 392 :
(1995) 2 SCR 692 : (1995) 2 UJ 21

Hon'ble Judges : Faizan Uddin, J;A. S. Anand, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

A.S. Anand J.-Leave granted.

2. Respondent 1 along with another person filed a petition under Section 133 of the Code of Criminal Procedure against the appellant alleging that he was blasting the rocks in an area on a large scale thereby causing nuisance to the respondents and others. The petition was filed on 21-1-1986. The Sub-Divisional Magistrate summoned the appellant to appear before him by an order dated 27-2-1986. Since the Sub-Divisional Magistrate proceeded with the enquiry without drawing up a preliminary order, the appellant approached the High Court challenging the proceedings initiated by the learned SDM without drawing up a preliminary order. It was directed by the High Court that the objection raised by the appellant be considered and disposed of by the Sub-Divisional Magistrate

3. It, however, appears that in spite of the observations of the High Court, the Sub-Divisional Magistrate did not draw up the preliminary order and proceeded with the enquiry in the case. During the pendency of the proceedings, a Commissioner came to be appointed, by the consent of the parties, to submit a fact-finding report. On 11-11-1987 when the matter came up before the Sub-Divisional Magistrate neither counsel for the appellant nor counsel for the

respondents were present. Even the objections to the report had not been filed. We do not know the reason for the absence of the counsel for the parties on that date as the record is silent. However, we find that the Sub-Divisional Magistrate after perusing the report of the Commissioner held that the appellant was causing nuisance from the quarry industry and directed that the quarrying and blasting operations should stop permanently. A direction was issued to permanently close the quarry operations. The matter was taken to the High Court by the appellant which noticed that the preliminary order had not been drawn up and even the final order had not been drawn up in the prescribed form, but held that those defects were mere irregularities and did not affect the validity of the proceedings. The order of the Sub-Divisional Magistrate was upheld

4. In our opinion the omission on the part of the Sub-Divisional Magistrate to draw up a preliminary order, which is a sine qua non for initiating proceedings under Section 133 of the Code of Criminal Procedure and without following the procedure provided for by Section 138 CrPC, the order made by the Sub-Divisional Magistrate on 13-1-1988 is unsustainable and is vitiated. The High Court fell in error in not properly appreciating the effect of non-compliance with the mandatory requirements of drawing up a preliminary order before proceedings under Section 133 CrPC. Neither the order of the High Court nor that of the Sub-Divisional Magistrate can therefore be sustained

5. This appeal consequently succeeds and is allowed. The orders of the Sub-Divisional Magistrate dated 13-1-1986 and of the High Court dated 2-6-1989 are hereby set aside

6. We, however, clarify that should the activity of the appellant be a cause of public nuisance, the order made by us in this appeal, shall not stand in the way of the authorities, to take such appropriate action as is authorised by law by following the procedure prescribed by the law.