
(1998) 11 MAD CK 0007

In the Madras High Court

Case No : Criminal Original Petition No's. 5815 to 5817 of 1996 and Criminal Miscellaneous Petitions No's. 2653 to 2655 of 1996

C.A. Srinivasa Mudaliar/Vedavalli/M. Chan-Jraskkaran

APPELLANT

Vs

Sub Divisional Executive Magistrate, Kancheepuram

RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 133(I)(d)

Citation : (1999) 1 LW(Cri) 199

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : A. Muthukumar, for the Appellant; M. Babu Muthu Meeran, Government Advocate (Criminal Side) for State, for the Respondent

Final Decision : Allowed

Judgement

A. Raman

1. Challenging the Order passed by the Sub-Divisional Executive Magistrate, Kancheepuram, in R.C.No.756/96/A3, 25.1.1996, these petitions

are filed.

2. The Sub Divisional Executive Magistrate, Kancheepuram has stated in his Order that as he received a report to the effect that the building

bearing Door No.13-DI, T.K. Nambi Street, Kancheepuram-3, is likely to fall and thereby cause injuries to persons living or carrying on business

there and as he is of the opinion that it is warranted to remove the existing old building, it has become necessary for him to pass an order, directing

the petitioners herein to remove the trade carried on in that building and to desist from carrying on such trade in that building and further calling

upon them to show cause within 15 days of the said order. This Order also makes

a mention that the Order duly made cannot be called in question in any civil court.

3. Section 133 of Cr.P.C. provides the authority for passing such an order, wherever it is brought to the notice of the Authority concerned that there is any public nuisance, which should be removed. For the purpose of discussion, I will set out Section 133(l)(d), which reads as follows:-

Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State

Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying

on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the

removal or support of such tree, is necessary.

4. It is stated that the building in question is an old building and is in a dilapidated stage. The proceeding here is initiated u/s 133(l)(d) of Crl.P.C.

The necessary conditions to apply Section 133(l)(d) of Crl.P.C. can be thus set down as under: -

a) that the building, tent, or structure or tree is in such a dangerous condition that it is likely to fall.

b) that by such fall, it is likely to cause injuries to the neighbourhood or the passers by.

5. Here, admittedly, the notice is issued u/s 133(l)(d) to the inmates or occupants of the building. In other words, the tenants in occupation of the

said building are the persons against whom, proceedings u/s 133(l)(d) is initiated. It is clear that an action under this Section can be taken only if

the building is in such a condition as is likely to cause injury to the neighbours or passers by. Therefore, the action under this Section cannot be

taken where it is likely to cause damage to the inmates of the building, as held in the decisions reported in Basanti Devi Vs. Rex, , and Shaukat

Hussain and Another Vs. Sheodayal Saksaina,

6. There is yet another point to be taken into account. I do not know under what authority, it can be stated in the Order by the Sub Divisional

Executive Magistrate that the Order cannot be called in question in a Civil Court.

He has no right at all to say that his Order cannot be called in question in a Civil Court. Further, in this case on hand, it is admitted that already action has been initiated by the Landlord under the Tamil Nadu Buildings (Lease and Rent Control) Act and the same is pending. It is also reported that action has been taken by the landlord for eviction on the ground that the building has become old and that the landlord wants to demolish the same and put up fresh construction over the property.

7. It is to be pointed out that this Provision comes under the Heading of "Public Nuisance". It is in the nature of Police Order. It is not a matter, where it can be stated that any public interest is involved. But, in this case, it is admitted that there is a proceeding pending before a Civil Court, where the landlord has invoked the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act and the prayer there is for the demolition and reconstruction of the building. The petitioners herein are the tenants of the property. Therefore, the question whether the building is actually in a dilapidated condition and whether it is just and necessary to pull down the building and reconstruct the same, will have to be necessarily gone into on that application, pending before the Civil Court. Moreover, the provisions of Section 133 of Cr.P.C. will be attracted only in cases of emergency and where there is imminent danger to the health or safety of the public. Here, the Order does not show any imminent danger to the public. But, the order simply states that the building is likely to fall. Therefore, an analysis would show that the Order passed by the Sub Divisional Executive Magistrate, is not a justifiable one. Further it is not stated in the Order that there is any imminent danger to the inmates or to the public.

The Section clearly provides that only if it is likely to cause injury to persons living or carrying on business in the neighbourhood or passing by, the Order u/s 133 of Cr.P.C. can be passed. But, here in this case, it is not so. On the other hand, the proceeding is initiated against the inmates or tenants of the building. Hence, I am clearly of the opinion that the order passed by the Sub Divisional Executive Magistrate, is not a valid order and deserves to be set aside.

8. In the result, these petitions are allowed, quashing the Order passed by the Sub Divisional Executive Magistrate, Kancheepuram, on 25.1.96 in R.C.No.756/96, A3. Consequently, CrI.M.P.Nos.2653 to 2655/96 shall stand

closed.