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**(2011) 02 CHH CK 0058**  
**In the Chhattisgarh High Court**  
**Case No : Criminal Revision No. 34 of 2010**

Chandan Mal Nahata and Other

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

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**Date of Decision :** 14-02-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 133, 133, 134, 135, 136

**Citation :** (2011) 1 CGBCLJ 184

**Hon'ble Judges :** T.P. Sharma, J

**Bench :** Division Bench

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## Judgement

T.P. Sharma, J.—Being aggrieved by the order dated 30.12.2009 (copy enclosed herewith as ANNEXURE P-1) passed by the Court of Shri N.K. Chandravanshi, learned 1st Additional Sessions Judge, Raipur in Criminal Revision No. 80/2009 between Ratanlal Vidhani & another Vs. State of C.G. & others thereby quashing the well reasoned order dated 22.6.2009 (copy enclosed herewith as ANNEXURE P-2) passed by the Sub Divisional Magistrate, Raipur in Case No. 1140/01, the applicants prefer this revision petition on the following facts and grounds:

By this revision, the applicants have challenged legality and propriety of the order dated 30.12.2009 passed by the First Additional Sessions Judge. Raipur in Criminal Revision No. 80/2009, whereby learned First Additional Sessions Judge has reversed the order dated 22.6.2009 passed by the Sub Divisional Magistrate, Raipur In Case No. 1140/2001 passed u/s 133 of the Cr.P.C.

As per order impugned and previous order passed by this Court in Criminal Revision Nos. 534 of 2002 and 643 of 2004, proceeding u/s 133 of the Cr.P.C. has been initiated in the year 2001, it was finally contested up to the High Court and vide order dated 5.12.2008 in Criminal Revision Nos. 534 of 2002 and 643 of 2004, case has been remitted to the Sub Divisional Magistrate for inquiry in accordance with Sections 133 to 141 of the Cr.P.C., especially in the light of existence of any emergency and availability of other remedy. Para 10 of the aforesaid judgment reads as under-

Consequently, both the petitions are allowed. Orders impugned dated 5.12.2003 and 1.8.2002 are quashed. The Sub Divisional Magistrate shall inquire into the matter in accordance with the provisions of Sections 133 to 141 of the Code, especially in the light of existence of any emergency and availability of other remedy, and shall pass order afresh within six months from the date of filing of a copy of this order by the petitioners herein.

After learned of the case, the Sub Divisional Magistrate has asked report from the Commissioner, Municipal Corporation, Raipur who has submitted its report vide report dated 27.5.2009, in which the Commissioner has mentioned that condition of the accommodation is dilapidated. On the basis of aforesaid report and hearing the parties, the Sub Divisional Magistrate has passed the order dated 22.6.2009 and directed for respondents No. 2 and 3 for removal of public nuisance. Same was challenged before the revisional Court and vide order impugned, the revisional Court has reversed the order of the Sub Divisional Magistrate.

2. I have heard teamed counsel for the parties, perused the order impugned and other documents filed on behalf of the applicants.

3. Learned counsel for the applicants submits that after remand of case No. 1140/ 2001 by this Court again report has been obtained by the Sub Divisional Magistrate from the Commissioner, Municipal Corporation, Raipur and on the basis of aforesaid report, the Sub Divisional Magistrate has passed the order u/s 133 of the Cr.P.C. Learned counsel further submits that report received from the Commissioner, Municipal Corporation, Raipur is evidence in terms of Section 140(2) of the Cr.P.C. Report of such person may be read as evidence in the case. While directing the removal of emergency the Sub Divisional Magistrate has not committed any illegality but by reversing the order, the revisional Court has committed illegality and has exceeded the jurisdiction vested on it. Learned counsel contended that considering the dilapidated and dangerous condition of the aforesaid accommodation and busy area of the city to save the persons, public nuisance required to be removed immediately.

4. On the other hand, learned State counsel opposes the revision.

5. Learned counsel for respondents No. 2 and 3 opposed the revision and submits that as per case, alleged emergency is in existence since 2001 and the aforesaid public nuisance has not caused any damages to any person or property of the person. The parties are having alternate remedy of civil Court which they have already availed and civil suit is pending before competent forum, therefore, any emergency in absence of existence of emergency the revisional Court has rightly reversed the order of the Sub Divisional Magistrate.

6. Learned counsel for respondent No. 4 also opposes the revision.

7. As per order impugned and copies of other orders, definitely alleged emergency is in existence since 2001 but no any damage has been caused to

any of the parties. Property rented to respondents No. 2 and 3 by the applicants. By relying report of the Commissioner, Municipal Corporation, Raipur, the Sub Divisional Magistrate has again passed the order u/s 133 of the Cr.P.C. for removal of public nuisance. Definitely, as per Section 140(2) of the Cr.P.C. such report may be read as evidence.

8. Copy of the report Annexure P/5 reveals that inspection report has been submitted by the Commissioner, Municipal Corporation, Raipur who has not shown itself as an expert. Documents attached with the annexure reveals photograph of the accommodation showing its dilapidated condition, notice issued by the Municipal Corporation from time to time to the applicant and notice issued to respondents No. 2 and 3 by owner. Alleged document Annexure P/5 reveals that alleged public nuisance has not been inspected by any expert and he has formed his opinion on the basis of some notice and photographs which are not sufficient for forming any opinion.

9. While reversing the order of the Sub Divisional Magistrate, learned First Additional Sessions Judge, Raipur has held that after lapse of eight years of alleged first emergency there is no existence of emergency.

10. Proceeding u/s 133 of the Cr.P.C., is emergency in nature and with a view immediate relief to public as an urgent measure before taking such recourse from competent civil Court, but it cannot be used as alternate forum to avoid the Jurisdiction of competent civil Court. As per order of the Sub Divisional Magistrate, the Sub Divisional Magistrate has acted under clause (d) of sub-section (1) of Section 133 of the Cr.P.C. which reads as under:-

(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.

Pendency of proceeding since 2001 till today shows that there was no likelihood of fall of such building or likelihood of causing any injury to persons living or carrying on business or passing by. The parties have also filed civil suit before the competent forum and are having opportunity for last ten years to file such civil suit-

11. On the aforesaid basis by reversing the order of the Sub Divisional Magistrate the First Additional Sessions Judge has neither exceeded the jurisdiction vested on it nor committed any illegality warranting interference in exercise of revisional Jurisdiction. Consequently, the revision being devoid of merit is liable to be dismissed and it is hereby dismissed.