
(2016) 04 MAD CK 0127

In the Madras High Court

Case No : Criminal Revision Case No. 619 of 2016

D. Settu

APPELLANT

Vs

Divisional Executive Magistrate/Revenue Divisional Officer
Ranipet Division

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2016) 3 MLJCriminal 321

Hon'ble Judges : Mr. M. Venugopal, J.

Bench : Single Bench

Advocate : Mr. S. Kumaradevan, Advocate, for the Appellant; Mr. V. Arul, Government Advocate (Criminal Side), for the Respondent

Final Decision : Allowed

Judgement

Mr. M. Venugopal, J.—The Petitioners have filed the instant Criminal Revision Petition, as against the impugned order, in Reference No.Na.Ka.A6/7890/2015, dated 21.3.2016 (pertaining to the Lock and Seal Order), passed by the First Respondent/Divisional Executive Magistrate/Revenue Divisional Officer, Ranipet Division, Ranipet, Vellore District.

2. The First Respondent/Divisional Executive Magistrate/Revenue Divisional Officer, Ranipet Division, Ranipet, Vellore District, while passing the impugned order, dated 21.3.2016, at paragraph No.5, had observed that the subject matter of property, based on the request of the Village Public was personally inspected and at the time of inspection, in two poultry forms, there were no hens/chicks and it remained empty. Further, it was mentioned that from these poultry forms, at a distance of - metres, there were residences of the public and because of these poultry forms, in the nearby residential portions, bad smell wind is blowing and it was found that environment got affected.

3. Moreover, at paragraph 6 of the impugned order, it was also mentioned that

again the aforesaid details were taken up for consideration once again and at Arcot Circle, Melathangal Village, in Patta No. 108 belonging to one Dharmalinga Mudaliar, S/o. Rajarathina Mudaliar, bearing Survey No. 37/2B - 0.34.5 hectares land, his sons, Settu and Elumalai (Revision Petitioners) had formed two poultry forms and in the aforesaid place, it was found out really that the environment got affected in terms of ingredients of Section 133 of the Code of Criminal Procedure, a bad smell emanating from the aforesaid two poultry forms would cause hardship to the General Public Sanitation and as such, the said industry was to be stayed or to be properly removed and keeping in mind, as per Section 133 (1) (b) of the Code of Criminal Procedure, the aforesaid two poultry forms are wholly to be prohibited and accordingly, entrances to the poultry forms were ordered to be sealed by the Tahsildar, as per directions being issued to that effect. The said order till another order is to be passed was also directed to be executed by means of advice given to the Tahsildar of Arcot.

4. Being dissatisfied with the aforesaid order passed by the First Respondent/ Divisional Executive Magistrate/Revenue Divisional Officer, Ranipet Division, Ranipet, Vellore District, the Revision Petitioners had projected the present Criminal Revision Petition before this Court, as aggrieved persons, mainly contending that the impugned order passed by the First Respondent is in violation of the principles of Natural Justice, contrary to law and against the probabilities of the case.

5. The Learned Counsel appearing for the Petitioners contend that for passing the impugned order, dated 21.3.2016 by the First Respondent (pertaining to Lock and Seal Order), the First Respondent in the impugned order had not specifically mentioned anything about the public nuisance or danger to health. Also, it is represented on behalf of the Petitioners that without issuing show cause or final order, the First Respondent cannot pass the impugned order under Section 133 (1) (b) of the Code of Criminal Procedure.

6. It is the contention of the Learned Counsel for the Petitioners that a copy of the complaint from the public was not furnished to the Petitioners either before or at the time of conducting an enquiry by the First Respondent, which again is in breach of well settled principles of natural justice.

7. The Learned Counsel appearing for the Petitioners takes a plea that in the impugned order, there are no clear cut averments to the effect that "poultry is injurious to health and physical discomfort of the community".

8. During the last leg of argument, it is projected on the side of the Revision Petitioners that the impugned order of the First Respondent, dated 21.3.2016, had not specified the exact distance between the Residences of the Public and the Poultry.

9. At this stage, this Court, pertinently points out that Section 133 (b) of the Code of Criminal Procedure refers to "Trade or Occupation" and the said occupations or trades which are in themselves injurious to health and physical

comfort, and has nothing to do with trades which in themselves are innocuous but in the course of which the manager or prier of them commits a public nuisance, as per decision Bareiro, (1888) PR No. 47 of 1888.

10. An order can certainly be passed in terms of Section 133 of the Code of Criminal Procedure where the carrying of the trade is injurious in present, a distant possibility by of any injury to the health or physical comfort of the community, would not justify an action under this Section, as per decision of this Court *Donnington Tea Factory v. Sub-Divisional Magistrate and Sub-Collector, Connoor* (1998 Cri. L.J 3585, 3586, 3587) (Mad)).

11. In reality, "Community" in clause (b) of 133 of the Code of Criminal Procedure cannot mean residents of a particular house, as per decision of the Honourable Supreme Court *Kachrual Bhagirath Agarwal v. State of Maharashtra* (2004 Cri. L.J 4634).

12. It cannot be forgotten that to take necessary action under Section 133 of the Code of Criminal Procedure it is not necessary that the members of the public shall make a complaint. However, for invoking jurisdiction under Section 133 (1) of the Code of Criminal Procedure, it is not necessary, that there should always be a danger or inconvenience to the public at large. In a particular case, even if danger or inconvenience is about to be caused to an individual over a public right, it would be sufficient, as per decision *Budh Singh v. Hapu Ram* (1996 Cri. L.J 1576 (1578) (Raj)).

13. It is to be pointed out that a harmonious reading of Section 133 & 138 of the Code of Criminal Procedure go to show that it is the function of the Magistrate to conduct an enquiry and to decide as to whether there was reliable evidence or not to come to the conclusion to act under Section 133 of the Code of Criminal Procedure. Section 133 Cr.P.C. can be pressed into service when the nuisance is in existence.

14. It cannot be gainsaid that Section 133 of the Code of Criminal Procedure is of course a discretionary one, but, yet it is a categorical. The Magistrate ought to exercise a Judicious discretion, as opined by this Court. It is to be remembered that the proceedings are not meant to settle private disputes or a substitute for civil proceedings. Also that, to bring a trade or occupation within the ambit of Section 133 (1)(b) of the Code of Criminal Procedure, it must be shown that the interference with public comfort was considerable and a large section of public was affected.

15. At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court *Kachrual Bhagirath Agarwal v. State of Maharashtra and others*, ((2005) 9 Supreme Court Cases 36 (42)), at paragraph 12, it is observed as follows:

""12. The term "nuisance" as used in law is not a term capable of exact definition and it has been pointed out in Halsbury's Laws of England that:

"Even in the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort."

16. Also, in the decision of the Hon'ble Supreme Court Vasant Manga Nikumba and others v. Baburao Bhikanna Naidu (1996 SCC (Cri) 27 (28)), it is observed as follows:

"Nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. It may be public or private nuisance. As defined in Section 268 IPC, public nuisance is an offence against public either by doing a thing which tends to the annoyance of the whole community in general or by neglect to do anything which the common good requires. It is an act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy the property in the vicinity. On the alternative it causes injury, obstruction, danger or annoyance to persons who may have occasion to use public right. It is the quantum of annoyance or discomfort in contra distinction to private nuisance which affects an individual is the decisive factor."

17. As far as the present case is concerned, on going through the impugned order, dated 21.3.2016 of the First Respondent, this Court is of the considered view that at paragraph 5, at line No. 4, there is a blank in regard to the distance where the residents of the public are there.

18. To put it succinctly, exact distances in metre was not pin pointedly mentioned in the impugned order at paragraph No. 5. In view of the non-mentioning of the distance in metres or conspicuously omitting the same, at the time of passing of the order, in the considered opinion of this Court, makes an order invalid and an otiose one. On this simple ground alone, this Court is constrained to interfere with the said order, dated 21.3.2016 of the First Respondent, since there appears to be a lapse/omission on the part of the First Respondent in not mentioning the distance in metres. Obviously, the said omission has ultimately resulted in serious miscarriage of justice to the Petitioners, in the considered opinion of this Court. Viewed in that perspective, this Court in furtherance of substantial cause of justice, without delving deep into the merits of the matter and also not expressing any merits in the subject matter in issue, sets aside the impugned order, dated 21.3.2016 and allows this Criminal Revision Petition.

19. In the result, this Criminal Revision Petition is allowed and the impugned order, dated 21.3.2016, is hereby set aside, by this Court, for the reasons assigned in the Criminal Revision Petition. The First Respondent is directed to pass fresh orders in the subject matter in issue under Section 133 (1) (b) of the Code of Criminal Procedure, by providing necessary opportunities, to the Petitioners and others concerned, if any, of course bearing in mind the principles of Natural Justice. The said order is to be passed by the First Respondent in a dispassionate manner and that too in a qualitative and quantitative fashion and

as a speaking one (by outlining the process of reasoning), within a period of four weeks, from the date of receipt of a copy of this order. Liberty is granted to the respective parties to raise all factual and legal pleas before the First Respondent and the First Respondent is to consider and advert to the same, at the time of passing the fresh order, with an open mind. Consequently, the connected Crl. M.P. No. 4153 of 2016 is closed.