
(1977) 09 AHC CK 0030

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 5983 of 1976

Deen Dayal and others

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 23-09-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 397, 399(3), 482

Citation : (1977) 09 AHC CK 0030

Hon'ble Judges : V.N.Verma, J

Final Decision : Dismissed

Judgement

V. N. Verma.

This is an application under section 482 Cr. P. C. for quashing the order dated 28. .0.1975 passed by Additional Magistrate First Class Fatehgarh and the order dated 20 8.76 passed by Sessions Judge Farrukhabad in a case under Section 133 Cr. P. C.

Four persons, namely, Ram Das, Jagannath, Munna Lal and Nathu Singh (hereinafter referred to as the opposite parties) gave an application 29.3.1975 in the court of District Magistrate Farrukhabad mentioning therein that Deen Dayal, Lekhpat, and Soney Lal and Radhey Shyam (hereinafter referred to as the applicants) had constructed a Chabutra near their house in consequence whereof the public pathway had been partly obstructed causing much inconvenience to the people of the village and prayed that suitable action be taken against them. This application was sent to S. O. P. S. Rajepur for inquiry and report. S. O. P. S. R. Rajepur inspected the locality and found the complaint made by the opposite parties to be true. Accordingly, he submitted a report in favour of the opposite parties and on the basis of that report S. D. M. Fatehgarh (Sri Vinai Kumar) passed a conditional order under Section 133 Cr. P.C. He called upon the applicants to appear in Court within a week and show cause why the impugned Chabutra constructed by them be not removed and the public pathway restored to its original shape and width. The applicants filed objections against the

aforesaid show cause notice. They did not deny the existence of the pathway in question. All that they alleged was that their Chabutra was a very old Chabutra and it did not cause any obstruction to the pathway.

Both the sides led evidence before the Magistrate concerned. After going through the evidence on record, the learned Magistrate came to the conclusion that the applicants had encroached on the public pathway by constructing their Chabutra. Accordingly he confirmed the preliminary order passed earlier. Feeling aggrieved with the order of the learned Magistrate, the applicants went up in revision to the court of sessions. The learned Sessions Judge found no force in this revision and dismissed it. The applicants have now filed the present application under Section 482 Cr. P. C. for quashing the orders passed by the Magistrate and the learned Sessions Judge.

I have heard the learned counsels for the parties at sufficient length and after doing so I do not think that this petition has any merit behind it. Section 482 contains the inherent power of the court can ordinarily be exercised, when there is no express provision of the subjectmatter. It is well settled that where there is an express provision, barring a particular remedy, the court cannot resort to the exercise of inherent powers. In this case the applicants felt aggrieved with the order passed by the Magistrate and went up in revision to the Court of Sessions under section 397 Cr. P. C. The learned Sessions Judge who heard this revision found no substance in it and dismissed it accordingly. Subclause (3) of section 399 Cr. P. C. says that where any application for revision is made by or on behalf of any person before the Sessions Judge the decision of the Sessions Judge there on in relation to such person shall be final and no further proceedings by way of revision at the instance of such person, shall be entertained by the High Court or by any other court. This means that the order which the sessions Judge passed in this case had become final. The question is whether the applicants can be allowed to circumvent the provisions of sub clause (3) of section 399 Cr. P. C. by taking recourse the section 482 Cr. P. C. In my opinion they cannot be permitted to adopt such a course. Where a revision to the High Court against the order of the subordinate Judge is expressly barred, the inherent powers contained in section 482 Cr. P. C. would not be available to defeat that bar. Therefore, as it is, the present petition is not legally maintainable and on this ground alone it is liable to be thrown out.

On merits also, I do not think that the orders passed by the courts below suffer from any error of law or any legal Infirmary causing injustice or prejudice to the its. Both the courts below have given a definite finding that a pathway existed at the spot and the applicants had partly obstructed the width of that pathway by constructing a Chabutra on it. This finding of the courts below is based on proper appraisal of evidence. The orders passed by them, therefore, call for no interference.

In the result, I find no force in this petition and dismiss it accordingly. Stay order dated 21.9.1976 is vacated.