

**(2012) 02 MP CK 0003**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 2212 of 2010**

Dr. Virendra Kumar Maheshwari

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision : 10-02-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 133, 133(1)(a), 133(1)(b), 133(1)(b)(ii), 138

**Citation :** (2013) 1 Crimes 309 : (2012) 4 MPHT 42

**Hon'ble Judges :** J.K. Maheshwari, J

**Bench :** Single Bench

**Advocate :** K.N. Gupta, assisted by Mr. Rajendra Singh Dhakad, for the Appellant; Nidhi Patankar, Govt. Advocate for the Respondent Nos. 1 and 2 and Mr. Prashant Sharma, Advocate for the Respondent No. 3, for the Respondent

**Final Decision :** Allowed

## **Judgement**

J.K. Maheshwari, J.—Being aggrieved by the order, Annexure P-1, dated 24-4-2010 and Annexure P-6, dated 26-2-2010 passed by the Collector, District Gwalior directing closure of the Nursing Home, the petitioner has preferred this petition invoking extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is the contention of the petitioner that on 26-2-2010 without affording due opportunity, preliminary order u/s 133 of Cr.PC was passed wherein four irregularities were shown. Those were of obstruction of the road due to having Gumties, two-wheeler vehicles and four wheeler vehicles causing nuisance to the inhabitants of the community. It was further said that the attendants of patients used to create nuisance by parking their vehicles in front of the gates and on denial create dispute with the residents. It was also said that the waste thrown in open place is spread by the animals in front of the house of various persons on account of not having dustbin available to keep such waste and proper arrangement for biomedical waste has not been done which is creating nuisance and having adverse impact on the health of the residents of

the locality, however, directed to close the nursing home and to file reply.

2. In the preliminary order, the reference of the report of the Executive Magistrate, dated 23-2-2010 was made but the copy thereof was not supplied to the petitioner, however, reserving right to file a detailed reply on the allegations made in report, point-wise reply was submitted by him. It is stated in the reply that on 15 feet wide public road, the Municipal Corporation, Gwalior, vide order dated 5-2-2010 directed to grant parking facility to Ex-serviceman, namely, Ranveer Singh Chauhan, for two wheeler and four wheeler vehicles who is operating the said stand. The fact with respect to installation of Gumties creating public nuisance on the road, it is stated that the Gumties so found are none of the family members of the petitioner. "Pankaj Juice Centre" and "Deepak Tea Stall" are having no connection with the hospital of petitioner and the Municipal Corporation by issuing receipt is taking rent from those Gumties. It has not been explained in the notice that which type of public nuisance is caused to the inhabitants from these Gumties. In addition to the same, it is specifically said that the petitioner is not keeping his own four wheeler vehicles on the road. However, the public nuisance so alleged is not by the petitioner. It was further denied that the attendants were advised by the petitioner to park their vehicles in front of the houses of the neighbours to create nuisance, however, the said fact is incorrect. It is specifically averred that the petitioner's nursing home is one of the high-standard nursing home in Gwalior city having all the arrangements for the betterment of the general patients with cleanliness. In the operation theatre, in general and in special wards and also in ICU, proper dustbins are available, however, issue of nuisance relates to safety so projected in the show-cause notice is incorrect. It is further said that the Pollution Control Board has issued the certificate, which is valid from 1-8-2008 to 31-7-2010 showing no pollution. It is also said that for the biomedical waste "Davis Surgico" has been given contract for removal of those wastes making payment as per the instructions of the G.R. Medical College Society, Gwalior, therefore, all the allegations so alleged are denied. Alongwith the said reply, affidavits of Shivkumar Dubey, Sunil Sikarwar, Shivcharan, Soni, Murari Kushwah, Poonam Shivhare, Dr. K.M. Rai, Dharmveer Mehta, Rajesh Pippal, Pradeep Shivhare, Rocky Savita, who are the residents of Lakshmibai Colony where the nursing home is situated, have been attached denying the public nuisance. It is further said that at present 90 patients are admitted who are having serious ailments. In such circumstances, the order of closure of the nursing home may be recalled otherwise the persons who are already admitted shall suffer irreparable loss of their life.

3. After perusal of the reply, the comments of the Executive Magistrate have been sought for and thereafter final order (Annexure P-1), dated 24-4-2010 was passed. In the said order, the authority competent has referred four issues of the show-cause notice and also the other issues. The complainant has not been afforded opportunity to lead the evidence or prosecution witnesses have not been made available for cross-examination. The accused has also not afforded an

opportunity to lead evidence as contemplated under the law and finally it is directed that on account of keeping two wheeler and four wheeler vehicles on the public road and not making proper arrangement of biomedical waste which is hazardous to health causing nuisance to the inhabitants, directed for closure of the nursing home within 48 hours by passing order (Annexure P-1).

4. Petitioner in the petition averred that the said nursing home is situated at 85-Laxmibai Colony, Gwalior, having its registration under the provisions of M.P. Upacharya Grah Tatha Rajo Upachar Sthapana Sambandhi (Registrikaran Tatha Anugyapan) Adhiniyam, 1973, issued by the Chief Medical and Health Officer, Gwalior, Annexure P-2. Prior to issuance of such certificate, the authority competent is required to verify whether the necessary facilities are available or not. The said registration has been extended from time to time. It is further said that before starting nursing home ventilator services, and other inclination charges are required to be deposited in the G.R. Medical College Society, Gwalior. The receipts thereof have been collectively enclosed as Annexure P-3. Petitioner has also deposited the biomedical waste charges with G.R. Medical College Society and also filed the daily chart of the collection of the waste of the nursing home as Annexure P-4. On applying no objection certificate from M.P. Pollution Control Board, it was granted as per Annexure P-5. It is also said that the nursing home of the petitioner is serving to the society in the field of public health since last more than 20 years. Being prestigious nursing home of Gwalior various facilities are made available like ICCU. Surgical Ward, Burn and Casualty Ward, Orthopedic Colly Curoma wherein number of patients are admitted and taking treatment. It is said that in the hospital 10 ICCU beds, two surgical ICCU beds, 6 beds for burn casualties and 13 beds for Orthopedics and 12 for cynic patients including 19 special wards and 12 beds of anglican post operation with two post delivery beds and 5 casualty beds. In addition thereto, 38 general beds are available to which 6 doctors, 56 compounders and nurses are working. Thus, the nursing home is offering services for better health to the citizens of Gwalior, however, keeping the vehicles by the attendants in the stand and to remain present may not cause any act of public nuisance to the inhabitants, more so, the aforesaid nuisance is not by the petitioner, however, in the name of public nuisance, power so exercised u/s 133 of Cr.PC is arbitrary. It is further said that prior to passing the order, the procedure so prescribed u/s 138 of Cr.PC has not been followed. It is also submitted that the orders impugned have been passed without affording an opportunity to cross-examine the complainant and other witnesses and without supplying the report and comments of the Executive Magistrate-which are relied upon, in order impugned. Thus, in gross violation of principles of natural justice and without affording reasonable opportunity of hearing as prescribed, the order (Annexure P-1) is passed, it may be set aside. It is, further, said that the reasons so specified showing public nuisance are not attributable to the petitioner. Therefore also, the power u/s 133 of Cr.PC cannot be exercised to the extent of directing the closure of nursing home of the petitioner. Accordingly, prayer has been made to allow the petition and to quash

the orders impugned (Annexures P-1 and P-2).

5. The respondent Nos. 1 and 2 have filed their reply raising preliminary objection of alternative remedy. On merits, it is stated that the Executive Magistrate has carried out the inspection on 19-2-2010 and submitted its report on 23-2-2010 as per Annexure R-1. The Chief Medical and Health Officer, Gwalior, also carried out inspection on 19-2-2010 and submitted report (Annexure R-2). However, relying upon such report, the preliminary order (Annexure P-6/R-3), dated 26-2-2010 was passed. After passing the order, a notice to show cause was given and on filing reply by the petitioner comments were called from the Executive Magistrate, Gwalior. On submitting the comments dated 30-3-2010, Annexure R-4 and after giving oral opportunity of hearing to the petitioner and on due consideration of the reply, the District Magistrate found that the nuisance is being created by the nursing home run by the petitioner situated at Laxmibai Colony, Gwalior and therefore, directed for its closure by the order dated 24-4-2010, Annexure P-1. It is further said that the object to initiate proceedings u/s 133 of Cr.PC was to stop the public nuisance, which was being caused on account of running of nursing home by the petitioner and procedure u/s 133 of Cr.PC is summary in nature which has been followed, however, orders (Annexure P-1 and P-6) have rightly been passed.

6. Respondent No. 3, the complainant namely Ramgopal Thakle, by filing reply has stated that, he is the senior citizen residing alongwith his wife, used to wake up in the night on account of nuisance made by the attendants of the patients. By the siren of the ambulance, they used to suffer with nightmare and on account of which they are suffering from various health problems. It is said that the proprietor of the petitioner Nursing Home has given an indirect proposal for sale of the house on receiving more than the market value but because he could not succumb to the pressure, however, he has to fight for the just cause. It is said that the reports and the documents so attached were prepared on the hypothesis of the authorities committing illegalities and the petitioner is going to become richer day by day. Answering respondent submitted a complaint, thereupon the action was taken and the order (Annexure P-1) has rightly been passed after following the provisions as contemplated under M.P. Upacharya Grah Tatha Rajo Upachar Sthapana Sambandhi (Registrikaran Tatha Anugyapan) Adhiniyam, 1973. By attaching various photographs, it is tried to demonstrate that the attendants are used to keep vehicles on the public road creating nuisance. It is said that by not making proper arrangements of parking, sitting arrangements of the attendants and by not making the other facilities available to the attendants, they are creating nuisance for the inhabitants, Biomedical waste has also not been properly organised which is injurious to the health of the citizens, therefore, the order of closure has rightly been passed after following procedure.

7. Shri K.N. Gupta, learned Senior Counsel appearing on behalf of the petitioner contends that the authority competent has not acted fairly in exercising the

power as conferred u/s 133 of Cr.PC. It is further contended that while passing the orders (Annexures P-6 and P-1), the procedure so specified u/s 138 of Cr.PC has not been followed, therefore, the order of closure of institution in such proceedings is vitiated and it maybe quashed. He has placed reliance on the judgment of the Apex Court in the case of C.A. Avarachan v. C.V. Sreenivasan and Anr., (1996) 7 SCC 71 . It is submitted by Shri Gupta, learned Senior Counsel, that if there is a public nuisance, first of all, the removal of those nuisances may be ordered but the authority competent cannot direct that the said trade or occupation should be stopped directing the closure of Nursing Home, though the nuisance is not by the proprietor or owner of nursing home, u/s 133 of Cr.PC. In support of the said contention, reliance has been placed on the judgment of Apex Court in the case of Gobind Singh Vs. Shanti Sarup, . It is further contended that in the case of State of M.P. Vs. Kedia Leather and Liquor Ltd. and Others, the Apex Court has considered the scope of Section 133 of Cr.PC and observed that to take proceedings u/s 133 of Cr.PC, which is of civil nature and if it is opted to prevent public nuisance immediately without furnishing an opportunity to lead the evidence, passing of such an order is not in conformity with law. It is said that the order impugned has been passed on the consideration, which is not shown in the show-cause notice, though the order is persuaded on those issues also. However, orders closing the Nursing Home cannot be sustained in the eyes of law, therefore, it may be quashed.

8. Smt. Nidhi Patankar, learned Government Advocate representing the State Government, contended that the authority competent is having jurisdiction to remove the public nuisance if it is hazardous to the residents of the said community. After receiving the report of the Executive Magistrate and also the report of the Chief Medical & Health Officer, Gwalior, the order impugned has rightly been passed invoking the powers u/s 133 (1) (b) and (ii) of the Cr.PC. It is said that while passing the order an opportunity of hearing has been allowed to the petitioner and after having been satisfied that continuation of functioning of the said Nursing Home in the locality, the nuisance to the residents is being created, thus, the order of closure of Nursing Home has rightly been passed.

9. Shri Prashant Sharma, learned Counsel representing the respondent No. 3 has contended that on the compliant made by respondent No. 3 the action was taken by the Collector, District Gwalior and passed the order which is in conformity with Section 133(1)(b) (ii) of the Cr.PC. It is contended by him that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community may be desisted from carrying on such business and trade, however, the authority competent exercising such power has passed the order restraining the operation of the Nursing Home, which cannot be said to be beyond scope and power of such authority under the Act. So far as following the procedure, it is urged by him that the order impugned has rightly been passed because the procedure of summons trial is to be followed as apparent from Section 138 of the Cr.PC. In the said case, an opportunity of hearing ought to have been allowed, which has been

afforded to the petitioner, however the orders (Annexure P-1 and P-6) have rightly been passed. In view of the foregoing, it is urged that the order impugned passed by the Collector concerned is in accordance with law, which is liable to be upheld by dismissing the petition.

10. Petitioner, by filing the application for taking the document on record (Annexure P-12), contended that the registration of the Nursing Home has been renewed by the Chief Medical and Health Officer, Gwalior, by issuing certificate up to 31-3-2013. The Regional Officer of M.P. Pollution Control Board has issued the renewal of authorisation under Biomedical Waste (Management & Handling) Rules, 1998. The Municipal Corporation, Gwalior, has also issued a cleanliness certificate of Nursing Home, dated 4-7-2011. The G.R. Medical College Society, Gwalior received Rs. 28,921/- for biomedical waste to a period from October, 2011 to December, 2011. The Fire Officer of the Municipal Corporation, Gwalior, has also issued a certificate dated 26-12-2011 issuing no objection up to December, 2012. The photographs of the house of the complainant have also been filed as Annexures P-17, P-18 and P-19 to indicate the fact that there is no obstruction in front of his house and no vehicles are parked or having any waste material in front of house creating a cause to make complaint. Affidavits of P.L. Sharma and L.P. Savita have also been produced to indicate the fact that the reference made in the report of the Executive Magistrate of those names against petitioner has been disputed. The photographs have also been produced to indicate the fact that the owner of the nursing home has made the arrangements for the parking, at a place where the vehicles are already parked in addition to the parking arrangements made by the Corporation. In view of the said facts, it is urged that the allegations so alleged against the petitioner are unfounded otherwise, the Chief Medical and Health Officer is not required to issue the renewal certificate under M.P. Upacharya Grah Tatha Rajo Upachar Sthapana Sambandhi (Registrikaran Tatha Anugyapan) Adhiniyam, 1973. The Pollution Control Board and the Municipal Corporation cannot issue the certificate of renewal and cleanliness in the hospital. In view of the said, it is urged that the action so taken by the District Magistrate, is arbitrary, malafide and in the non-observance of the principal of natural justice.

11. After having heard learned Counsel appearing for the parties and on perusal of the record, the issue of alternative remedy so raised is not germane because after granting stay about more than 1-1/2 years back this petition is pending and the reply, rejoinder and the application taking additional document on record has already been filed. It is made clear here that the alternative remedy would not operate as a bar where the writ petition seeks enforcement of any of the fundamental rights; where there is violation of principles of natural justice; or where the order of the proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the present case, the non-observation of principles of natural justice prior to closure of Nursing Home wherein 90 patients are admitted coupled with the fact that the procedure so contemplated to pass the order u/s 133 of Cr.PC has not been followed, however in the facts of this case the issue of

alternative remedy invoking jurisdiction under Article 226 of the Constitution of India does not create absolute bar. The guidance may be taken from the judgment of the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . In that view of the matter, the preliminary objection so raised is hereby repelled.

12. On facts, it is apparent that the petitioner is a proprietor and running a Nursing Home in the name of "Maheshwari Nursing Home". The certificate and the renewals were made under Madhya Pradesh Upacharya Grah Tatha Rajo Upachar Sthapana Sambandhi (Registrikaran Tatha Anugyapan) Adhiniyam, 1973. On the date of taking action, it was valid and further renewed by the Chief Medical and Health Officer, District Gwalior. The certificate having no pollution issued by the Pollution Control Board is also available on record. The petitioner-Nursing Home has given the contract of removing the biomedical waste to "Davis Surgico" to which amount has been paid in G.R. Medical College Society, Gwalior, and the receipts are available and the documents of collection of wastes of Nursing Home are also filed. The Municipal Corporation has given a contract for keeping two wheelers and four wheelers to one Ranveer Singh Chauhan. As per photographs (Annexure P-22) available on record, the petitioner has also made the arrangements of parking on the owner's risk. As per photographs (Annexures P-17, P-18 and P-19), no vehicle is parked or the waste is spread in front of the house of the complainant. As per the photographs filed by the complainant alongwith the return, it is not made clear that in front of his house there was a nuisance by parking the vehicles or by spread of waste. The petitioner has refuted the report of the Executive Magistrate, which is based upon two residents, namely, P.L. Sharma and L.P. Savita by filing their affidavits and has made an endeavour to satisfy that there is no public nuisance caused by him as specified in the show-cause notice (Annexure P-6). Even after passing the order impugned, the M.P. Pollution Control Board has issued the certificate having no pollution and the Municipal Corporation, Gwalior, of cleanliness in the hospital and also the Fire Officer of the Corporation has issued the certificate of appropriate fire arrangements. However, the allegations of public nuisance so alleged against the petitioner in the show cause (Annexure P-6), dated 26-2-2010 has been disputed by the petitioner. The inspection report of the Executive Magistrate dated 23-2-2010 and comments dated 30-3-2010 so relied upon in the order of closure have not been admittedly supplied prior to passing of the orders (Annexure P-1 and P-6). In the impugned order (Annexure P-1), various other factors have been taken into consideration relying upon the inspection of the Chief Medical and Health Officer, Gwalior and his report dated 19-2-2010, which has also not been supplied though persuaded to pass the order impugned. It is to be observed here that the Competent Authority is bound to supply the irregularities, if any, pointed out by any other authority and it form the basis to arrive at a conclusion of desisting to carry on the business. The non-supply of those documents is amounting to violation of principle of natural justice, which is required in fair administration. Thus, the principle of natural

justice has not been observed by respondents while passing the order.

13. In the case, where the action u/s 133 of Cr.PC for removal of public nuisance is required, the procedure as contemplated u/s 138, Cr.PC ought to be followed. However, relevant provisions of Sections 133 and 138 of the Cr.PC are required to be reproduced which are thus:-

133. Conditional order for removal of nuisance.-- (1) 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-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel, which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(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; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal

of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation:-- A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

138. Procedure where he appears to show cause.-- (1) If the person against whom an order u/s 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

On reading of Section 133 of Cr.PC, it is apparent that it empowers the District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate that on receiving the report of a police officer or other information and on taking such evidence, he may pass an order with respect to subject matter so specified under sub-section (1) (a) to (f) making a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order and may direct to remove such obstruction or nuisance or to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed. It may also prevent or stop the construction of such building, or to alter the disposal of such substance; or to remove, repair or support such building, tent or structure; or to remove or support such trees; or it may further direct to fence such tank, well or excavation; or to destroy, confine or dispose of such dangerous animal in the

manner provided in the said order. While passing such an order the procedure as per Section 138 of Cr.PC is required to be followed. As per Section 138 of Cr.PC, it is apparent that if the person against whom an order u/s 133 is necessary, then by issuing notice to show cause, the Magistrate can take evidence in the manner as in a summons-case. For the purpose of passing such order u/s 133, on receiving a report the evidence is required to be taken as thought fit by the authority. In fact, it is an integral part and mandatory requirement of Section 133 of Cr.PC, however even for passing preliminary order the procedure has to be followed. The procedure for summons case is specified in Chapter XX of the Code of Criminal Procedure, 1973 u/s 254, Cr.PC. Thereby the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced to support the prosecution allegation, and also to hear the accused and take all such evidence as he produces in his defence. In the present case, while passing preliminary order dated 26-2-2010 asking reply from petitioner four reasons were specified for the closure of the Nursing Home. It is to be observed here that prior to passing the order (Annexure P-6) the procedure as specified u/s 138 of Cr.PC has not been followed although it is required to be followed mandatorily. In the facts of the present case, it is to be further observed that the Competent Authority while passing the final order dated 24-4-2010, Annexure P-1 has referred to the reply filed by the petitioner and specified that the oral opportunity of hearing was allowed but from the order, it is not clear that an opportunity has been given either to the prosecution to prove the allegations so levelled against the petitioner affording an opportunity of cross-examination on the prosecution witnesses and also not afforded an opportunity to the petitioner to lead evidence in defence which is the requirement of the summary trial so specified u/s 254 of Cr.PC. In such circumstances, in the opinion of this Court prior to passing preliminary order (Annexure P-6) and the final order (Annexure P-1), the procedure so contemplated u/s 138 of Cr.PC has not been followed. The aforesaid analogy fortifies from the judgment of the Apex Court in the case of C.A. Avarachan (supra). In such circumstances, in the opinion of this Court the order (Annexure P-1), dated 24-4-2010 and order (Annexure P-6), dated 26-2-2010 so passed is not in conformity to the procedure as prescribed u/s 138 of Cr.PC.

14. Now, the argument so advanced by Mr. Prashant Sharma, learned Counsel appearing on behalf of respondent No. 3 with respect to removal of the trade or occupation or the keeping of any goods or merchandise which may be found injurious to the health and physical comfort of the community may be passed desisting from carrying on the same, is required to be dealt with. After perusal of Section 133(1)(a) to (f) of Cr.PC it is apparent that the District Magistrate is competent on receiving the report of police officer or other information, and may direct for removal of public nuisance specified in sub-sections (a) to (f) and on receiving such report and taking evidence and the person causing such obstruction or nuisance to desist from carrying on, or to remove or regulate in such manner as may be directed or for other purposes also so specified therein. In this regard, Chapter X of Cr.PC has been enacted with a view for maintenance

of public order and tranquility wherein Part A deals with unlawful assemblies while Part B relates to public nuisances. The opening word of Section 133 of Cr.PC indicates that the powers so conferred under the Act is required to be exercised by passing conditional order of removal of nuisance. The interpretation of sub-section (ii) of Section (1) (b) with respect to desisting from carrying on the trade or occupation has to be understood in the context to which the said chapter has been enacted by the Legislature. However, in the opinion of this Court, while exercising power so contemplated u/s 133 of Cr.PC, the District Magistrate is bound to record a finding that the act so alleged falls within the purview of public nuisance caused by performing the business and its removal is necessary. In the facts of the present case, the allegation with respect to keeping of the two wheeler or four wheeler vehicles on the road by the attendants or nuisance created by the attendants is required to be examined whether it is an act of public nuisance by the petitioner. So far as other allegations of not observing the biomedical waste and which is spread by the animals which may be hazardous to the public at large and having connection with the conduct of any trade or occupation or keeping of any such goods or merchandise injurious to life or physical comfort of the community is required to be seen in connection to desist from carrying on or to remove or regulate it in a manner as may be directed for such trade or occupation. On the said issue, the authority competent is required to record a finding that despite payment for collection of the biomedical waste by the petitioner not maintaining the cleanliness from the said biomedical waste is a fault on his part or it is the fault of The collecting agency. The authority competent is also bound to see that the services rendered by running a Nursing Home of the standard so specifically pleaded rendering services for general importance carries more weight or the nuisance created by the attendants in the locality as alleged is having greater importance. It is further required to be examined whether the complaint of individual person against the Nursing Home is a complaint to vindicate or having some substance to remove the public nuisance so really created. On all these issues after furnishing an opportunity to lead evidence, finding must be recorded that the case so alleged falls within the purview of public nuisance and is required to be removed or regulated otherwise direction for its removal is necessary. It is not a case where by virtue of an act of air pollution, water pollution or fire pollution or otherwise health safety of the inhabitants of area is being affected. In the facts of this case, on finding any fault, the direction must be issued to regulate the said public nuisance or to remove it if any and non-compliance may be fatal. On subsequently finding violation of such direction, appropriate orders u/s 133(1)(b) (ii), Cr.PC may be directed which is on the extreme end in the fact and circumstances of the case. However, without following the procedure contemplated u/s 138 of Cr.PC directly passing the preliminary order dated 26-2-2010 (Annexure P-6) and final order dated 24-4-2010 (Annexure P-1) for closure of the Nursing Home, wherein number of patients are admitted cannot be upheld. The analogy taken by the Hon''ble Apex Court in the case of Gobind Singh (supra), may be followed wherein it is said that where the health, safety

and convenience of the public at large is involved, it would be safer to accept the view of the Magistrate but at the same time he could not direct in his final order to cease carrying on the bakery trade at the particular site. In that view of the matter, I am of the considered opinion that the final order (Annexure P-1), dated 24-4-2010 and the preliminary order (Annexure P-6), dated 26-2-2010 are hereby quashed and accordingly, this petition succeeds and is hereby allowed. The authority competent is at liberty to take recourse to law, if permissible in view of the foregoing observations. In the facts and circumstances of the case, parties to bear their own costs.