

(1980) 09 RAJ CK 0007

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 175 of 1980

Heera Lal and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 22-09-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 142, 397, 482

Citation : (1981) RLW 538 : (1981) WLN 260

Hon'ble Judges : K.S. Sidhu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Sidhu, J.—This application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter called the Code), is directed against the order, dated, June 10, 1980, of the Sessions Judge, Jaipur District Jaipur, thereby affirming, in revision, the order of injunction dated, November 6, 1979, passed by the Sub-Divisional Magistrate, Sambhar, u/s 142(1) of the Code, directing the petitioners herein to remove the bushes created by them from a way and refrain from causing any obstruction there pending inquiry in the matter u/s 133 of the Code.

2. A few facts relevant for the disposal of this application may be stated here. On April 18, 1979, Gopal, respondent 2 herein filed an application u/s 133 of the Code, in the court of the Sub Divisional Magist rate, Sambhar, complaining that the petitioners herein and one Bhoora, had caused obstruction in the public way running through the land comprised in Khasra numbers, 818 and 179, belonging to them. On May 8, 1979, the learned Magistrate made a conditional order requiring the petitioners and Bhoora to remove the obstruction complained of, or, if they objected to remove it, to appear before him and show cause why the conditional order be not made absolute. The petitioners herein appeared on June 11, 1979, and filed written objections denying the existence of any public right of way through their land. Bhoora however admitted the existence of such a right in respect of the way in question.

3. On June 19, 1979, while the matter was still pending inquiry before the Sub Divisional Magistrate, respondent 2 herein made an application u/s 142(1) of the Code for an order of temporary injunction requiring the petitioners herein to remove obstruction from the alleged way and refrain from causing any obstruction till the final disposal of the application u/s 133. The petitioners opposed the said application. By his order, dated, November 6, 1979, learned Sub-Divisional Magistrate granted the injunction as prayed, taking the view that such a step was necessary to prevent imminent danger and injury to the public. The petitioners herein challenged this order in revision filed in the court of sessions. As already stated, learned Sessions Judge affirmed the order of injunction made by the Magistrate and consequently dismissed the revision petition. Undaunted by the said dismissal, the petitioners have approached this court, invoking its extraordinary jurisdiction u/s 482 of the Code, for setting aside the order of injunction made by the learned Magistrate.

4. The respondent's learned Counsel raised preliminary objections to the effect that the impugned order, being an inter-locutory order, is not liable to be questioned in revision and, by the same token, u/s 482, and that, in any case, since the Sessions Judge has refused to interfere with it in the exercise of his revisional powers, another petition of revision cannot be entertained from the same order in the garb of an application u/s 482 of the Code.

5. So far as this Court is concerned, the law is now fairly well settled that power u/s 482 of the Code can be exercised in relation to interlocutory orders and that such power is not controlled or limited by the bar created by Section 397(2) of the Code, in as much as the two powers are separate and distinct and operate in their respective fields (See Bhanwar Lal and Others Vs. Madanlal and Others, The Division Bench in the cited case were, however, quick to add the caveat that power u/s 482 must be exercised with due circumspection and in very rare cases. This view of the Division Bench finds support from the authority of the Supreme Court reported in Raj Kapoor and Ors. v. State and Ors. 1980 Criminal law Reporter (S.C.) 64. Their Lordships held that the opening words of Section 482 contradict the contention that exercise of inherent power in respect of a particular order is barred. It may therefore be safely held that inherent power u/s 482 can be exercised in relation to interlocutory orders if:

(i) It is necessary to give effect to any order under the Code.

or

(ii) It is necessary to prevent abuse of the process of any court.

or

(iii) It is necessary otherwise to secure the ends of justice.

6. It will thus be seen that though the powers of the High Court are wide u/s 482 of the Code, yet it must exercise self-restraint in exercise of such power. The power may be exercised in very rare cases which satisfy the conditions

prescribed by Section 482, and that too when the Court finds that there is no other way of securing the noble ends which the said Section seeks to secure. The mere fact that an order of a Magistrate was unsuccessfully challenged in a petition of revision before a court of sessions is no ground, *proprio vigore*, to reject out of hand an application u/s 482. Such an application must be examined to find out if the impugned order made by the Magistrate would result in abuse of the process of the court or failure of justice. If so, the High Court may legitimately interfere and redress the grievance of the aggrieved party in the exercise of its powers u/s 482. The non-obstante Clause in Section 482 makes it quite clear that Section 397 cannot control or limit the operation of Section 482 in any manner.

7. I have very carefully considered the impugned order made by the learned Sub Divisional Magistrate Sambhar and find that it cannot be legitimately faulted as amounting to abuse of the process of the court or resulting in failure of justice. Power is vested in the learned Magistrate u/s 142(1) of the Code to pass such an order. He has given reasons why he felt impelled to exercise that power. This court may not agree with his reasons. The mere fact that it may not agree is no ground for holding that the order amounts to abuse of the process of the court. After all, it is an order of a temporary nature. It will cease to operate, if as a result of inquiry which is pending, learned Magistrate is not satisfied that the conditional order made by him on May 8, 1979, be made absolute, *Prim facie*, there is no question of the impugned order occasioning any failure of justice. Learned Magistrate has referred to certain documents on the record in support of his tentative opinion that for some time atleast before he passed the conditional order there was some sort of path way through the petitioners, land. It is of course not possible to express any opinion at this stage if this was a private path way or a public one, These are matters which will certainly be looked into and finally determined be the learned Sub Divisional Magistrate in the inquiry which is pending before him.

8. All said & done, there, this is not fit case warranting interference by this Court with the impugned order in the exercise of its inherent powers u/s 482 of the Code. The application u/s 482 is, therefore, dismissed.