

(1986) 02 KAR CK 0037

In the Karnataka High Court

Case No : Criminal Revision Petition No. 526 of 1984 (Against order of Taluk Magistrate, Bangalore, D/- 13-8-1984)

H.K. Chindaiah

APPELLANT

Vs

M.K. Gopala Iyengar and Another

RESPONDENT

Date of Decision : 14-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133 (1), 133 (1) (d), 136
Penal Code, 1860 (IPC) — Section 188

Citation : (1986) ILR (Kar) 1222

Hon'ble Judges : M.S. Patil, J

Bench : Single Bench

Advocate : M. Papanna, for the Appellant; C.V. Nagesh and S.S. Koti, Govt. Pleader, for the Respondent

Judgement

1. This revision is directed against the order, dated 13-8-1984, passed by the Taluk Executive Magistrate, Bangalore North Taluk, Bangalore, in Case No. MAG. SE. 102/1983-84, whereby he had directed the petitioner herein to cut off and remove the standing two coconut trees within seven days from the date of receipt of the order, failing which to suffer penalty as provided under S. 188 of the Penal Code.

2. The Taluka Executive Magistrate purports to make the order under revision, as provided under S. 133(1)(d) of the Code of Criminal Procedure. The contention advanced by Mr. Papanna, learned counsel for the petitioner, is that the order as made by the court below being wholly illegal and in violation of the provisions of law contained in S. 133 onwards of Chapter X of the Code, the same is liable to be set aside. This contention appears to be well founded.

3. Now, apart from the fact that it does not appear from the records that the Taluka Executive Magistrate had been specially empowered by the State Government, as required under sub-section (1) of S. 133 of the Code, to make inquiry into such a cases of complaints of nuisance, the learned Magistrate has

made a sort of hybrid order simultaneously directing the petitioner to cut off and remove the standing trees within seven days and failing wherein to suffer the penalty as provided under S. 188, IPC, thereby combining the preliminary conditional order to be made under sub-sec (1) of S. 133 with the final order as contemplated to be made under S. 136 of the Code. Such combining of the conditional order to be made under S. 133(1) and the final order contemplated to be made under S. 136 is wholly impermissible. Whenever such a report of police officer or other information complaining unlawful obstruction or nuisance of the nature stated in S. 133(1) is received, the District Magistrate or the Sub Divisional Magistrate or other Executive Magistrate specially empowered in this behalf by the State Government is required, in the first instance, to satisfy himself of the existence of such obstruction or nuisance of any of the descriptions mentioned in Clauses (a), (b), (c), (d), (e) & (f) of sub-section (1) of S. 133 and if, on taking evidence, he thinks fit and considers such obstruction or nuisance should be removed, then he has to make, in the first instance, a conditional order requiring the person causing such obstruction or nuisance of any of the descriptions mentioned above to remove the same or desist and stop from doing any of such things as enumerated in sub-cl. (i) to (vi) of Clause (f) of S. 133(1) of the Code within a time to be fixed in the 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 why the order should not be made absolute. It is only where such person does not perform such act or fails to appear and show cause, the order shall be made absolute making him liable to the penalty prescribed in S. 188, IPC. It therefore follows that a person causing obstruction or nuisance of the nature stated in S. 133 must be given an opportunity of being heard before he is made liable to the penalty prescribed in S. 188, IPC. The time within which the act has to be performed and if there is any objection for doing of the same the time and place where he is required to appear and show cause for not complying with the order has also to be stated in the conditional order made under sub-section (1) of S. 133 of the Code. That is so because as provided under S. 137(1), it is open and permissible to a person against whom a conditional order is made to show that no such obstruction or nuisance exists and where he denies and objects for doing of the particular act stated in the conditional order, it is obligatory on the Magistrate to enquire into the matter before making the order absolute. If the Magistrate is satisfied, on inquiry, that the conditional order as made is proper and reasonable, he may make the same absolute with or without modification, as the case may be, and if not satisfied no further proceedings shall be taken. An elaborate procedure has been prescribed for the inquiry to be made in such cases of nuisance before the conditional order is made absolute. Therefore, the order as passed by the Magistrate combining conditional and final order without making inquiry, as provided by the provisions of the Code, is wholly illegal and cannot be sustained.

4. In the result, the revision is therefore allowed and the order under revision is set aside.

5. Revision allowed.