
(2014) 03 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : C.R.M.-M.-6495 of 2013

Jitender Yadav

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 138, 482

Citation : (2014) 4 FLT 327

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Vishal Gupta, Advocate for the Appellant; Anupam Sharma, A.A.G. and Amit Jaiswal, Advocate for the Respondent

Judgement

Rekha Mittal, J.—The present petition u/s 482 of the Code of Criminal Procedure (for short "the Code") has been preferred seeking quashing of order dated 12.10.2012 (Annexure P-11) passed by the Additional Sessions Judge, Faridabad whereby revision petition filed by the petitioner against order dated 13.9.2011 (Annexure P-9) passed by the Sub-Divisional Magistrate, Faridabad in proceedings u/s 133 of the Code has been dismissed and the order passed by the Sub-Divisional Magistrate for removal of mobile tower alongwith D.G. set has been affirmed. The facts relevant for disposal of the present petition are that respondent Deepak Gupta submitted an application (Annexure P-4) for obtaining information under the Right to Information Act, 2005 on the plea that a mobile cell phone tower alongwith generator was installed on the roof top of House No. A-1630 Green Fields Colony, Faridabad in the month of June 2006 and the same is creating noise as well as air pollution, adversely affecting health of people residing nearby the building. The Sub-Divisional Magistrate, Faridabad took cognizance of the matter u/s 133 of the Code and passed conditional order on 15.3.2010 to remove nuisance/noise pollution as well as heavy vibration in the public place/residential area within 10 days or to appear on 12th day of April, 2010 at 10.00 a.m. to show cause why the order be not enforced. This conditional order was against owner of roof top of House No. A-1630, Green Field

Colony, Faridabad. In response thereto, reply was submitted for M/s. Wireless-TT Info Service Limited by Shailendar Akhouri, Advocate. Thereafter, the Sub-Divisional Magistrate, Faridabad after hearing parties, passed order dated 22.7.2010 (Annexure P-7) confirming the conditional order passed on 15.3.2010 and the respondent was directed u/s 138 of the Code to stop operation of the mobile cell phone tower and generator set installed on the roof top of House No. A-1630, Green Field Colony, Faridabad within 15 days and a copy of the order was sent to the Tehsildar, Faridabad for compliance.

2. The order passed by the Sub-Divisional Magistrate was challenged in revision filed by Jitender Yadav and M/s. Wireless-TT Info Service Limited before the Sessions Judge, Faridabad. The petition was accepted by the Court, impugned order dated 22.7.2010 was set aside with a direction to the Trial Court to proceed further with the matter in accordance with law and the parties were directed to appear before the Lower Court on 25.1.2011. Subsequent thereto, the Sub-Divisional Magistrate, Faridabad provided an opportunity to both the parties to lead evidence and passed order dated 13.9.2011 (Annexure P-9). A relevant extract thereof reads as follows :

In the light of the above facts it is clear that the tower alongwith D.G. Set installed is covered u/s 133, Cr.P.C. and it is not only posing a threat to the inhabitants of this building but also to the inhabitants of neighbouring buildings. Besides it is dangerous to the general public who are either using the passage of living in the surrounding. Therefore, it is a public nuisance hence, I order to remove the Mobile tower alongwith D.G. Set within three months of passing of this order.

3. Jitender Yadav, owner of roof top of House No. A-1630, Green Field Colony, Faridabad challenged order dated 13.9.2011 by way of revision before the Court of Sessions and the Revisional Court did not find any error in the impugned order and eventually dismissed the petition on 12.10.2012.

4. Feeling aggrieved by the order passed by the Additional Sessions Judge, Faridabad, the present petition has been preferred by Jitender Yadav.

5. During the course of hearing, it is an admitted position of the case that the tele-communication tower and the D.G. Set on the roof top of the aforesaid property owned by Jitender Yadav has been installed by M/s. Wireless-TT Info Service Limited. The plea of the petitioner is that for installation of the tower and the D.G. Set, the aforesaid company sought permission from the Municipal Corporation, Faridabad, vide application dated 10.12.2007 (Annexure P-1) and appended thereto a report in regard to structural stability of building prepared by the Indian Institute of Technology, New Delhi (Annexure P-2) and letter allowing exemption from "No objection certificate" from the Haryana State Pollution Control Board (Annexure P-3) and the necessary permission was accorded.

6. The facts on record makes it evident that reply in response to conditional order passed by the Sub-Divisional Magistrate dated 15.3.2010 was filed on

behalf of the aforesaid company. One of the office-bearers of the company was examined as a witness in proceedings after remand of the case by the Revisional Court, vide order dated 21.1.2011 and in the said revision petition, the company was a co-petitioner with Jitender Yadav (petitioner herein). However, it remains a fact that in the proceedings conducted by the Sub-Divisional Magistrate, Faridabad neither at the time of passing of the conditional order nor the final order, the aforesaid company was impleaded as a respondent. In the absence of company being a party, which has admittedly installed the tower and D.G.-Set, the order passed by the Sub-Divisional Magistrate for removal of the aforesaid installation and affirmed in revision may not be executed. This apart, as the company is the real person to be prejudicially affected by such an order passed by the Sub-Divisional Magistrate, keeping in view the principles of natural justice, the company is required to be heard in the matter before made to suffer. Neither the Sub-Divisional Magistrate nor the Revisional Court bestowed its consideration to the fact that the company is a necessary party for the complete and effective adjudication of the matter in controversy. In view of the above, without appreciating merits of the controversy, lest it may prejudice either of the parties in the proceedings, the impugned orders dated 12.10.2012 (Annexure P-11) and dated 13.9.2011 (Annexure P-9) passed by the Additional Sessions Judge, Faridabad and the Sub-Divisional Magistrate, Faridabad, respectively, are ordered to be set aside and the matter is remitted to the Sub-Divisional Magistrate, Faridabad for decision afresh after impleading M/s. Wireless-TT Info Service Limited as a party. The Sub-Divisional Magistrate shall provide opportunity to the newly added respondent to lead evidence and any fresh evidence to be led by the parties already before the said authority. Keeping in view nature of the dispute raised by Deepak Gupta, prima facie raising an issue concerning environmental aspects, the Sub Divisional Magistrate is directed to conclude the proceedings positively within a period of six months from the date of receipt of certified copy of the order.