
(1984) 04 AHC CK 0034
In the Allahabad High Court

Jograj

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-04-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 137, 138, 482

Citation : (1984) AWC 399 Supp : (1984) CriLJ 1319

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M. Wahajuddin, J.—The applicant has come forward with a prayer that the judgment and order dt. 30.6.1982 passed by the Magistrate and the judgment and order dated 28.1.1983 passed by the Sessions Judge may be quashed. The matter relates to a proceeding u/s 133, Cr.P.C. On 23.10.1979 the Magistrate passed an order that Jograj and Rampal by constructing their Chabutras in front of their houses have obstructed the public passage and directed that they should show cause why the Chabutra should not be removed, otherwise the final orders will be passed. The present application has been preferred by Jograj. Vide judgment Annexure "3" the Magistrate observed that the Station Officer has submitted report, dated 26.8.1979 that the public passage is 250 yards long and 70 yards wide and Jograj has constructed 3 yards wide and 12 yards long Chabutra thereon; while Rampal has constructed 3 yards wide and 9 yards long Chabutra thereon obstructing the public passage. Thereafter the Magistrate discussed the evidence. Jograj, as would be borne out from the judgment, did not dispute the existence of a public path. He, however, maintained that his Chabutra in front of his house is 20-25 years old and it is the other person Rampal who has constructed a new Chabutra and blocked the passage. From the perusal of the judgment it would further appear that the existence of the public path was not disputed. The only dispute raised was which person has obstructed that passage by construction of the Chabutra. There was no denial of the public right as such, so the Magistrate after recording such finding rightly proceeded u/

s 138, Cr.P.C. After discussing the entire evidence on record the Magistrate has come to a conclusion that Jograj has also obstructed the public path and regarding Jograj he passed a very clear final order that he should remove that Chabutra, 3 yards wide and 12 yards long on the public path. Rampal was also called upon to remove his Chabutra obstructing the public path, giving its dimension.

2. Aggrieved by such order Jograj preferred a revision. Rampal also preferred a revision. Both revisions were dismissed by the Additional Sessions Judge and the order of the Magistrate was upheld.

3. It is being urged in the petition u/s 482, Cr.P.C. during arguments that in the preliminary order itself the dimension of the Chabutra of the applicant was not given, hence the final order stands vitiated. Reliance in that connection is placed upon the case of State v. Bal Kishan Singh 1969 AWC 302. It was laid down in that case that unless joint responsibility is alleged and it is stated that all the persons involved are jointly responsible, it is essential that the order should state specifically with regard to each person the specific obstruction made by him.

4. The facts of the case are distinguishable. In that case actually any final order u/s 138, Cr.P.C. was not passed; at the very stage of Section 137, Cr.P.C. a revision was preferred and the Additional District Magistrate found that the preliminary order was vague and ambiguous and made a reference to the High Court and the High Court in that context and background quashed the preliminary order. The inherent powers u/s 482, Cr.P.C. are meant to substantially serve the ends of justice and not to defeat it. In the preliminary order itself (Annexure "1") it was expressly mentioned that the applicant and another person have constructed their respective Chabutra adjoining to their houses on the public road. So it was crystal clear that it was the Chabutra of the individual parties which was the obstruction in respect of which the preliminary order was passed. It was also stated that the satisfaction was based on the police report dated 26.8.1979. That police report has been annexed with the counter-affidavit as Annexure "1". It would be found that there was also a site plan annexed with the police report. In the same the chabutras, their location and dimensions were shown. In the final order the Magistrate has again made the position very clear, giving the dimensions of the Chabutras of each of the individual parties and their location. The applicant contested the proceedings. He would be necessarily aware of all the materials on record including the police report, particularly when there was an express mention of the same in the preliminary order. It is noteworthy that the applicant's stand in the proceedings was that it is not his Chabutra but the Chabutra of the other side which exists on the passage and has caused obstruction, when this is the position, the applicant has in no way been prejudiced. He must have been well aware that the matter concerns his Chabutra adjoining his house, besides the Chabutra of another individual adjoining the house of that individual. Evidence was also led concerning applicant's Chabutra. No prejudice has been caused. The Chabutra

was covered by the preliminary order, so it is not that the Magistrate has proceeded beyond the preliminary order. In the final order the dimension of the Chabutra has also been expressly stated. The applicant was also not in dark about it, when the police report having the site plan and details of the measurements of his Chabutra was already there on the record. When that is the position, this Court will not exercise its inherent powers on the facts and circumstances of this particular case simply for any technicalities. The application is, therefore, dismissed.