
(2015) 02 MAD CK 0229

In the Madras High Court

Case No : Criminal Revision Case (MD) No. 135 of 2013, M.P. (MD) No. 1 of 2013, Criminal Revision Case (MD) Nos. 270 to 279 of 2013, M.P. (MD) Nos. 1 and 3 of 2013, Criminal Revision Case (MD) Nos. 449, 450 of 2012 and M.P. (MD) Nos. 1 of 2012 and 2 of 2013

K. Patchaiperalum

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 133(1), 134, 135, 138

Citation : (2015) 2 MLJ(Cri) 380

Hon'ble Judges : M. Sathyanarayanan, J.

Bench : Single Bench

Advocate : S. Muthalraj, for the Appellant; K. Chellapandian, Additional Advocate General assisted by P. Kandasamy, Govt. Advocate, Advocates for the Respondent

Judgement

M. Sathyanarayanan, J.—In all these Criminal Revision Cases, the orders dated 05.02.2013, 06.02.2013 and 29.08.2012, respectively passed by the Revenue Divisional Officer cum Sub Divisional Magistrate, Kovilpatti Sub Division, Kovilpatti, Tuticorin District, purported to be under Section 138 Cr.P.C., are put to challenge.

2. A perusal of the impugned orders passed by the Revenue Divisional Officer cum Sub Divisional Magistrate, Kovilpatti Sub Division, Kovilpatti, Tuticorin District, would disclose that in Tuticorin District, in the following villages:

bore wells have been put up in the patta lands and the ground water was drawn and it is being sold to the units involved in processing sea foods and exporting it to the foreign countries. In this regard, the first respondent/second respondent (as the case may be), based on the reports of the concerned officials and the study done on account of over- exploitation of the ground water, which resulted in seepage of sea water, has issued notices to the individual units/persons under

Section 133 Cr.P.C., after passing the preliminary order restraining them from doing so.

3. In response to the said notices, most of the persons had responded by pointing out that as and when the ground water situation improves, the jurisdictional District Collector as well as the jurisdictional Revenue Divisional Officer would relax the restraint order and permit the individual pattadhars to take water for the purpose of supplying it to the sea foods processing units. It is further stated that admittedly, they have been drawing water from their own patta lands by putting up the pumpsets which is assessed under the commercial tariff and the reasons assigned in the impugned orders that on account of over-exploitation, the ground water which consequently resulted in seepage of sea water, are absolutely baseless.

4. However, the first respondent/second respondent (as the case may be) had taken into consideration the reports of the revenue officials and the study done with regard to the impact of over-drawal of ground water, has passed the final orders on 05.02.2013, 06.02.2013 and 29.08.2012, respectively, restraining them from drawing ground water and challenging the legality of the same, the present revisions are filed.

5. The respective learned Counsel for the petitioners would vehemently contend that the impugned orders came to be passed solely on the basis that the Member of Legislative Assembly of Ottapidaram Constituency had made series of complaints and conducted agitations by instigating the public and there was absolutely no independent application of mind to the ground reality prevailing in those places.

6. It is further contended that Section 138 Cr.P.C., contemplates that after receipt of the reply to the show cause notice, it is obligatory on the part of the second respondent under Section 138(1) Cr.P.C., to take evidence in the matter as in the summons case and admittedly, the said procedure has been given a complete go-by.

7. The respective learned Counsel for the petitioners have also drawn the attention of this Court to the earlier orders passed by the learned Single Judge dated 04.08.2011 made in CrI.R.C (MD) Nos. 534 of 2011, etc., batch and would contend that this Court has set aside the similar set of orders passed by the Revenue Divisional Officer concerned and has given detailed directions in paragraph 52 of the order and in spite of such order, the very same official has completely chosen to ignore the same and pass the impugned orders, thus, per se against such canons of law and in gross violation and prayed for interference.

8. Per contra, Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.P.Kandasamy, learned Government Advocate (Criminal Side) for the State, has produced the original files relating to the impugned orders and invited the attention of this Court to the statements of witnesses recorded during the enquiry conducted under Section 138 Cr.P.C. and would contend that in most of

the cases, the concerned land owners had submitted their written response and they were enquired and the statements of witnesses have also been recorded and the first respondent/second respondent (as the case may be) based on the materials which included the report of the revenue officials and the field study done and taking into consideration the fact that over-drawal of ground water, would result in seepage of sea water, has passed the impugned orders purely on public interest and prayed for the dismissal of these revisions.

9. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the materials available on record in the form of typed set of papers and also the original files relating to the impugned orders produced by the learned Additional Advocate General appearing for the State.

10. The learned Single Judge of this Court in the common order dated 04.08.2011 passed in CrI.R.C(MD)Nos. 534 of 2011, etc., batch, has considered the similar challenge made to the impugned orders passed by the Revenue Divisional Officer concerned and in paragraph 52, has pointed out the legal infirmity in the impugned orders and it is relevant to extract the same, thus:

52. A conspectus of the materials available in this proceeding in the light of the illuminating judicial pronouncements, would pave way to emerge with following points which indicate that the impugned order suffers from certain legal infirmities:

a) as mandated by Section 133 Cr.P.C., the impugned order is not in the nature of conditional order. It has not required the person to remove the public nuisance within a time to be fixed.

b) The next stage in the procedure enumerated in Section 133 is that, if the person to whom the order is made, objects to remove the nuisance, he shall be directed to appear before the Executive Magistrate who passed the order or appear before any of the Executive Magistrates subordinate to him at a time and place which is fixed by him and show cause why the order should not be made absolute. In the present case, there is no direction to the person, if he objects, to appear before the authority to show cause.

c) The impugned order has not been addressed to specific person as ordained in Section 134 Cr.P.C. It has been issued in general and not to a specific person. Hence, there is deviation from the mandate in Section 134 Cr.P.C. The impugned order has not been issued in Form-20, prescribed in Cr.P.C. It should be addressed to a specific person as per the format and there shall be a specific direction to the person concerned to remove the obstruction or nuisance as the case may be.

d) The impugned order contains the direction of banning the activities without hearing the parties concerned. It is in the nature of final order which has to be passed in terms of Section 138 Cr.P.C. and even if an injunction is to be granted pending the enquiry, Section 143(2) Cr.P.C. has to be resorted to. To put it

specifically, no procedure has been adopted by the first respondent and hence no question of granting injunction pending the enquiry had arisen. The provisions in the code do not empower an Executive Magistrate to hand down a blanket ban order.

e) The Executive Magistrate shall take evidence as in a summons case in terms of Section 138, after the persons appear to show cause against the order passed under Section 133 Cr.PC and on considering the materials available, the Executive Magistrate shall make the conditional order absolute. In the present case, there is no such recording of evidence of the parties concerned and even at the inception, a final order has been passed without taking evidence and without any enquiry.

f) No preliminary order has been drawn up before passing the ban order under Section 133 Cr.P.C.

g) When section 135 Cr.P.C contains the procedure directing the persons, on whom the order is made, to perform within the time and in the manner specified in the order or the person to appear in accordance with such order to show cause against which, to comply with the said provision, the affected persons have no opportunity either to appear or to show cause against the order before the first respondent. Hence, the order gets vitiated for violation of principles of natural justice. The scheme formulated in the provisions aforesaid, has to be scrupulously followed to make the order as lawful one.

Ultimately, the impugned orders which were the subject matters of those revisions, were set aside and the second respondent therein was directed to comply with Sections 133 and 138 Cr.P.C., in letter and spirit.

11. In the case on hand, the second respondent after passing the preliminary orders under Section 133(1) Cr.P.C., had issued notices to the concerned land owners as well as the sea foods processing units under Form 20, calling upon them to submit their response.

12. Some individual units/companies, in response to the show cause notices, had submitted their reply stating among other things that they are drawing water from their own patta lands and further contended that on some occasions, though the first respondent/second respondent (as the case may be) has passed the restraint order, has relaxed the same permitting the land owners to exploit the ground water for the purpose of supplying it to the sea foods processing units and contended that on account of drawal of water, ecology and environment are not affected and in the event of restraint orders, their livelihood is affected and prays for appropriate orders.

13. A perusal of the impugned orders passed by the second respondent coupled with the original records produced by the learned Additional Advocate General appearing for the State, would disclose that the second respondent has taken into consideration the reports of the revenue officials and also taken into

consideration the Taluk Level Groups appointed by the District Collector who has conducted the survey and found out the consequences of over-exploitation of ground water. The files would further disclose that there were series of public agitations of the residents of the concerned villages who are very much concerned about the over-drawal of ground water.

14. The first respondent/second respondent (as the case may be) has also considered the written responses submitted by the concerned individuals and also summoned them including the land owners and recorded their statements and after thorough consideration of the same, has passed the detailed impugned orders with reasons.

15. Though it is a primordial submission of the respective learned Counsel for the petitioners that mandatory procedures as contemplated under Section 138 Cr.P.C. have been given a complete go- by, this Court is of the view that it is not so, for the reason that the impugned orders had disclosed the reasons for passing such restraint orders and the original files would also disclose that the statements of witnesses which included the land owners, have been recorded and therefore, is of the view that the procedures as contemplated under Section 138 Cr.P.C., have been complied with.

16. Therefore, in the light of the reasons stated above, this Court is of the view that there is no infirmity or error in the reasons assigned by the first respondent/second respondent (as the case may be) for passing the impugned orders.

17. In the result, all the Criminal Revision Cases are dismissed. Consequently, M.P (MD)Nos. 3 of 2013 (in all cases) in CrI.R.C. (MD)Nos. 270 to 279 of 2013 and M.P (MD) Nos. 2 of 2013 (in both cases) in CrI.R.C (MD) Nos. 449 and 450 of 2012, are closed and all the other miscellaneous petitions are dismissed.

18. After dismissal of all these revisions, the respective learned Counsel for the petitioners would contend that the impugned orders came to be passed during February 2013 and two monsoon seasons have been passed away and insofar as the monsoon period for the year 2015 is concerned, as per the meteorological report, there was copious rain and hence, possibility of ground water getting charged and as and when they make applications for drawal of water, this aspect may also be taken into consideration.

19. This Court heard the submissions of the learned Additional Advocate General appearing for the State, who would submit that appropriate studies will be done as to the recharge of the ground water and taking into consideration the present situation, the applications seeking permission/licence to exploit the ground water to be submitted by the land owners as well as sea foods processing units, will be considered sympathetically and in accordance with law. The said statement, on instructions, is placed on record.

20. It is also made clear that the law enforcing authorities have to act strictly in accordance with law, if they come across any violation regarding any ground

water exploitation.