
(2014) 12 RAJ CK 0010

In the Rajasthan High Court

Case No : Criminal Revision Petition Nos. 24 and 25 of 2012

Kalu Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133 397 401

Citation : (2015) 3 RLW 2175

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : G.S. Bhati, Advocate for the Appellant; L.R. Upadhayay, Public Prosecutor and Rajeev Patel, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.

1. The above revision petitions are filed by the petitioner Kalu Singh under Section 397 read with Section 401 Cr.P.C. against the order dated 22.11.2011 passed by the learned Sessions Judge, Jaisalmer in Cr. Revision Petitions Nos. 32/2011 and 34/2011 filed by respondents Swaroop Singh S/o. Dungar Singh, resident of Digga, Tehsil & District Jaisalmer and the General Manager, Indus Tower, C-Scheme, Jaipur whereby the revisional court while accepting both the revision petitions set aside the order dated 31.3.2011 of the SDM, Jaisalmer passed upon the complaint filed under Section 133 Cr.P.C. by the SHO, Police Station Mohangarh, upon complaint filed by the villagers in which the SDM, Jaisalmer allowed the application filed under Section 133 Cr.P.C. and issued directions to remove the mobile tower while treating the said tower as public nuisance. The learned counsel for the petitioner submits that after taking into consideration the entire facts and evidence and the interest of the public, the SDM, Jaisalmer allowed the application filed under Section 133 Cr.P.C. on the ground that the installation of tower created problem for public at large and mobile tower is very dangerous for human health because radiations/waves of

tower increases the deceases of cancer, impotency and deafness. According to learned counsel for the petitioner the villagers submitted a complaint to the District Collector, Jaisalmer and Panchayat Samiti, Jaisalmer upon which the Vikas Adhikari of Panchayat Samiti, Jaisalmer passed an order dated 30.7.2010 whereby the respondents Nos. 2 and 3 were directed to stop the work of erection of mobile tower, but the respondents Nos. 2 and 3 did not stop the work. Thereafter, the application was filed by the petitioner Kalu Singh and others villagers before the SDM, Jaisalmer under Section 133 Cr.P.C. to remove the construction of tower.

2. As per learned counsel for the petitioner no mobile tower can be put nearby school or hospital and near the bus stand or shops situated in very crowd area. According to the petitioner the order of SDM was perfectly justified but the revisional court erroneously quashed the order dated 31.3.2011 without any cogent reason, therefore, the order of Sessions Judge, Jaisalmer is not sustainable in law. While attacking upon the impugned order of Sessions Judge dated 22.11.2011, it is submitted that the revisional court has totally ignored the site map prepared under the direction of SDM, Jaisalmer and the fact that as per bye-laws/guidelines framed by the State Government, the mobile tower cannot be erected near hospital, school and crowded places, therefore, the order of Sessions Judge deserves to be quashed.

3. In support of his argument, the learned counsel for the petitioner invited my attention towards judgment of Division Bench of this Court reported in 2013(2) WLC (Raj.) 603 : Justice I.S. Israni (Retd.) & 3 Anr. vs. Union of India & Ors . and prays that order of Sessions Judge dated 22.11.2011 impugned in both the revision petitions is in contravention of law laid down by the Division Bench of this Court, therefore, both the revision petitions may be allowed and orders impugned may be quashed.

4. Per contra, the learned counsel appearing for the respondents vehemently opposed the prayer and submits that although while exercising jurisdiction under Section 133 Cr.P.C. the SDM can remove the public nuisance but to prove the public nuisance there must be an evidence to prove the fact that due installation of mobile tower, the public at large will suffer irreparable loss or physical agony. The revisional court gave clear cut finding that the land upon which the mobile tower is to be installed is belonging to Swaroop Singh - respondent No. 3 herein and before installation no objection certificate was also obtained from the Gram Panchayat and, there is no evidence on record to prove the fact that installation of mobile tower will create public nuisance. It is also observed by the revisional court that as per the report of Patwari concerned just 200 feet away there is mobile tower of BSNL in existence and that mobile tower is not creating any public nuisance, so also, the installation of mobile tower itself is a public utility, therefore, the SDM has committed an illegality in passing an order under Section 133 Cr.P.C. to remove the mobile tower.

5. After hearing both the parties, this Court is of the opinion that the finding

given by the revisional court is in consonance with law because while considering the fact that just 200 feet away there is mobile tower of BSNL company and there is no objection certificate issued by the Gram Panchayat, therefore, exercise of powers under Section 133 Cr.P.C., which is extra ordinary remedy cannot be exercised for general problems.

6. In view of the above, the order is not violating any direction given by the Division Bench of this Court in the case of Justice I.S. Israni (Retd.) (supra). In view of the above facts both the revision petitions are hereby dismissed.