

(1995) 09 MAD CK 0022

In the Madras High Court

Case No : Criminal Revision Case No. 617 of 1995, Criminal Revision Petition No. 616 of 1995 and Criminal Miscellaneous Petition 3621 of 1995

Krishna Industrial Chemicals Limited

APPELLANT

Vs

The Sub Divisional Magistrate and Sub Collector, Saidapet

RESPONDENT

Date of Decision : 20-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133(1)(f)(ii)

Citation : (1996) 1 LW(Cri) 246

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : K. Ravi for M/s. S. Anbalagan and P. Gunaraj, for the Appellant; A.N. Rajan, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

N. Arumugham, J.—Heard. This revision is filed by the owner of the chemical factory being run under the name and style, ""M/s Krishna

Industrial Chemicals Limited"" at Pappankuppam and Siddarajakandigai of Gummidipoondi taluk, challenging the propriety and legality of the order

passed by the Sub Divisional Magistrate and Sub Collector of Saiapet, in reference No. 93822/95-A.2, dated 5.9.95 u/s 133(1)(f)(ii) of the Code

of Criminal Procedure, suspending the operation of the company's normal function with immediate effect.

2. On the receipt of the complaint and representation made by the villagers of Pappankuppam and Siddarajakandigai of Gummidipoondi taluk,

alleging that the source of ground water in the area situate in and around the factory is getting polluted, as the chemical discharge coming out of the

factory without any proper treatment creates health hazard and impracticability

of cultivation and the existing road transport facility is also affected by the said discharge from the factory. The representation of the factory Manager was also received by the Executive authority to the effect that they would take earnest steps to repair the road on the southern side and also proper steps to treat the drainage water chemically with a view to prevent the chemical pollution through the water effluent and also other remedial measures. Learned Executive Magistrate, on getting a report from the Tahsildar, passed the impugned order, finding the above representations are correct on the ground that the company has not made any attempt to comply with their above said commitments. In the impugned order, it has also been referred that the Tamil Nadu Pollution Control Board has also renewed the consent order No. 8845 with regard to the existence of the said factory, in their proceedings T1/CMN/F/2077/W/95 dated 13.2.1995 and in another order T.1/CMN/C/1041/A/95 dt. 13.1.1995, both for water and air pollution, temporarily upto 31.3.1995, which has already expired subject to the following conditions:

- (1) The trade effluent shall be completely solar evaporated without any overflow.
- (2) The cooling water utilized by the unit shall be completely recycled without any bleed off.
- (3) The unit shall develop adequate green belt around the premises. Finding further that none of the conditions above referred to has been fulfilled

or complied with and accepting the representation of the residents and agriculturists of the locality, in furtherance of the power vested with him u/s

133(1)(b) of the Code of Criminal Procedure, learned Magistrate has passed the impugned order for temporary suspension of the function of the

factory, which is being challenged as above referred.

3. Today, this revision is taken up and disposed of with the concurrence of the Bar on behalf of the Petitioner and learned Government Advocate,

on merits. I have heard the Bar for the revision Petitioner against the impugned order and learned Government Advocate on behalf of the

Respondent. To appreciate the grievance of the parties herein, in the context of the impugned order, it has become necessary for me to advert to

the provisions contained in Chapter X(B) regarding public nuisance provided under the Code of Criminal Procedure. Section 133 of the Code of

Criminal Procedure reads like this:

Whenever a District Magistrate or a Sub Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State

Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers (a) that

any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used

by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise is injurious to the health or physical comfort of the

community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed

or the keeping thereof regulated; or

(c) that the construction of any building or the disposal of any substance, as is likely to occasion conflagration or explosion should be prevented or

stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying

on business in the neighborhood or passing by and that in consequence the removal repair or support of such building, tent or structure, or the

removal or support of such tree, is necessary, or

(e) That any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the

public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the

person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owing,

possessing or controlling, sub-building, tent, structure, substance, tank well or excavation or owing or possessing such animal or tree, within a time

to be fixed in the order:

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods all

or merchandise, or to regulate the keeping thereof in such manner as may be

directed or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order or if he objects so to it, 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, in the manner herein-

after provided, why the order should not be made absolute.

2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court:

Explanation provided to the above Section:

Public place"" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or receptive purposes.

Section 134 reads as follows:

The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rule, direct,

and a copy thereof shall be struck up at such place or places as may be fittest for conveying the information to such person.

Section 135 reads as follows:

The person against whom such order is made shall -(a) perform, within the time and in the manner specified in the order, the act directed thereby;

or (b) appear in accordance with such order and show cause against the same.

Section 136 provides that in case of such failure to comply with the conditions or order, such person shall be liable to the penalty prescribed in that

behalf in Section 188 of the Indian Penal Code and the order shall be made absolute. The Code by enacting Section 137 also provides the

procedure to be followed when the existence of public right is denied. Several other procedures have been provided by the Code under Sections

137 to 143 of the Chapter.

4. Enough for me at this stage to refer, upon a casual perusal of the impugned order passed by the learned Executive Magistrate, that the requirements made in Sub-clauses (f) and (vi) of Sub-section (1) to Section 133 of the Code have not been complied with. A perusal of the impugned order clinches the fact that no show cause notice was sent or any time or opportunity was given to the revision Petitioner with regard to the alleged nuisance and for the removal of the same and for the said reason alone, the impugned order has become vitiated. No notice seems to have been given to show cause the reason as to why action or order to close the factory could not be made. In fact, the principle of natural justice has not even been adverted to by learned Magistrate, while passing the impugned order. He has passed the order without adhering the basic norms prescribed in the Code. For the mere reasoning that without adhering to the mandatory requirements, ordering closure of the factory is rather arbitrary, invalid and in my considered view, definitely hit by the doctrine of *audi alteram partem*. I have heard learned Government Advocate in this regard. There can be no say in this matter on behalf of the Respondent for the non following of the procedural mandate provided under the Chapter X of the Code of Criminal Procedure. On the allegations and complaint made by the residents of the surrounding locality of the factory, pertaining to the alleged nuisance before the competent authority concerned, it is for the Officer concerned to make such orders after following all the procedural mandate for the removal of such nuisance and any order passed in this regard otherwise is void and therefore, for the said reasons, the impugned order passed in the instant case has become unsustainable and is liable to be set aside.

5. However, while doing so, I am not inclined to say that the existence of the nuisance are allowed to continue. Under such circumstances, it is for the Executive Magistrate to take cognizance and initiate proceedings in accordance with the procedural mandate provided under Chapter X of the Code of Criminal Procedure by providing every opportunity and issuing show cause notice and to dispose of the same in accordance with the law. But, the impugned order suspending the function of the factory itself may not be sustained and with the above directions, I am satisfied, to allow this revision by setting aside the impugned order.

6. In the result, for the foregoing seasonings and in the Bight of the directions given above, the revision stands succeeded and allowed and

consequently, the impugned order passed by learned Executive Magistrate in Rc.9382/95A.2 dt.5.9.95 is hereby set aside with liberty to take

fresh action as directed above.

7. Consequent to the disposal of the revision itself, on the representation made by learned Government Advocate that mere was no deployment of

police personnel in and around die factory in question, except on the date of inspection made by the Tahsildar, this request., police personnel

accompanied him and that therefore, there was no hindrance or obstruction being caused by any of the departments of the Government, I feel that

there exists no need to pass any order in CrI.M.P. No. 3621 of 1995, in the above context and accordingly, the petition is dismissed as

unnecessary.