

(2004) 09 AHC CK 0167
In the Allahabad High Court
Case No : Writ Petition No. 4378 of 2003 (M/S)

Mohd. Latif and Anr.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2004) 09 AHC CK 0167

Hon'ble Judges : K.S.Rakhra, J

Final Decision : Disposed Of

Judgement

K.S. Rakhra, J.

1. Present Sri R.N. Srivastava, Advocate for the petitioners and Sri Abdul Jabbar, Advocate for opposite parties.

In this writ petition, the interim order in favour of the petitioners was vacated on 582004.

2. With the consent of the parties, the petition has been heard and is being disposed of today itself.

3. The dispute is with regard to the alleged public passage on which the petitioner Mohd. Latif is said to have kept his ?ghoor? and caused obstruction. The proceedings were initiated on the report of Lekhpal and a conditional order was passed by the Magistrate under Section 133, Cr. P.C. The petitioners disputed the existence of the public passage before the Magistrate. The Magistrate after making necessary enquiry and hearing the parties made the conditional order absolute vide order dated 1372000 and directed the petitioners to remove the obstruction and nuisance. This order of the Magistrate was challenged by way of Criminal Revision No. 169 of 2000 by the present petitioners before the learned Sessions Judge, Barabanki. The Additional Sessions Judge, who heard the revision observed that with regard to land in dispute, the revisionistpresent petitioners have also filed a civil suit with regard

to the controversy in question in which the Civil Court has on 4121998 passed an interim order directly the parties to maintain status quo. A certified copy of the complaint of the said case was also perused by the Revisional Court. On the any next date i.e. 5121998, the opposite party No. 4 Israr Ahmed made application under Section 133, Cr. P.C. before the S.D.M. concerned and S.D.M. proceeded in the matter and passed the conditional order, which was later on confirmed as mentioned above. In the last para of the judgment dated 5122001 of the Revisional Court, it was observed that the present petitioners have disputed the existence of public passage and has agitated the issue before the Civil Court and had also obtained interim order prior to the commencement of the proceedings under Section 133, Cr. P.C. and therefore, it was the duty of the learned Magistrate concerned to have stopped the proceedings under Section 137, Cr. P.C. till the determination of the issued by the Civil Court. The Revisional Court clearly held that while acting contrary to that the Magistrate has committed illegality. The revision was accordingly allowed and the case was remanded to the Magistrate concerned. After the remand of the case, the Magistrate again dealt with the matter and he on the basis of the evidence adduced before him came to the conclusion that property in dispute in the Civil Court was different than the property with regard to the application made under Section 133, Cr. P.C. After holding thus, he again confirmed the conditional order and the revision against the said order has now been dismissed.

The contention of the learned Counsel for the petitioners is that in Criminal Revision No. 169 of 2000, Mohd. Latif v. Israr Ahmed & Ors., the Revisional Court after considering the circumstances and material, had clearly come to the conclusion that the property involved in the civil suit between the parties was the same with regard to which the proceedings under Section 133, Cr. P.C. have been initiated. The Revisional Court further held that an interim order has been passed by the Civil Court and oneday after the passing of the interim order by the Civil Court, the proceedings have been initiated. It was in these circumstances that the Revisional Court observed clearly that the Magistrate ought to have stayed the proceedings till the proper finding is given by the Civil Court in the matter. The argument of the learned Counsel for the petitioners is that in view of this it was not open to the Magistrate to have again opened the issue and come to a contrary conclusion than what was decided by the Revisional Court with regard to the identity of the property, which was too involved in proceedings.

4. The argument of the learned Counsel for the respondent No. 4 is that the property involved in proceedings under Section 133, Cr. P.C. was clearly different than the property involved in civil suit. It has been argued that judgment of the Magistrate clearly demonstrated the same as to how the property is different. The argument of the learned Counsel is that the Magistrate in these circumstances has rightly proceeded to decide the issue.

5. After considering the submission of both the sides, this Court is of the view that the finding of the Revisional Court in Criminal Revision No. 169 of 2000

mentioned above was binding on the Magistrate. He could not have reopened the issue ignoring the conclusion drawn by the Revisional Court and could not have come to a contrary conclusion in order to finally dispose of the proceeding by making a conditional order absolute. This is entirely against judicial propriety and judicial discipline. If the respondent No. 4 was aggrieved by any finding or observation of the Revisional Court in Revision No. 169 of 2000, he could have challenged the same in the High Court by appropriate proceedings. This was not done. In view of this, the Magistrate, in my opinion committed gross illegality and went beyond his jurisdiction to reopen the issue to record a finding that the property in dispute in proceedings under Section 133, Cr. P.C. is different than the property involved in civil suit between the parties. The confirmation of the order dated 18122002 of the Magistrate by subsequent Revision No. 363 of 2003 for the same reasons is also improper and illegal.

6. In view of this, the writ petition is allowed. The order dated 10102003 passed in Criminal Revision No. 63 of 2003, Mohd. Latif & Ors. v. Israr & Ors., as well as the order dated 18122002 passed by S.D.M. concerned under Section 133, Cr. P.C. are set aside. The S.D.M. shall comply with the order of the Revisional Court passed in Criminal Revision No. 169 of 2000 decided on 5122001 and take appropriate action only in accordance with the said order, which was not challenged by either party.