
(2006) 05 CAL CK 0027
In the Calcutta High Court
Case No : C.R.R. No. 771 of 2003

Prasanta Kumar Pal and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 183, 397, 401, 482

Citation : (2007) 2 CHN 291

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Prabir Kumar Mitra, for the Appellant; Barin Roy, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Bhattacharya, J.—The hearing arises from an application u/s 401 read with Sections 397 and 482 Cr. PC filed by the petitioner praying for revision of the order dated 16.9.2002 passed by the learned Sub-Divisional Magistrate, Uluberia, Howrah, in Misc. Case No. 160/2000 u/s 133 Cr. PC.

2. The circumstances leading to the above application are that on the complaint of O.P. No. 2 Ratikanta Pal an employee of B.D.O., Bagnan-II to his employer to exert Government power, inter alia, alleging that despite his objection, the petitioners are forcibly constructing a well on Plot No. 1318 comprising of 18 dec. land for the purpose of privy and bathroom which will cause nuisance to the water of the tank used for bathing, cooking and drinking, the B.D.O. held an enquiry through Sanitary Inspector, Bagnan-II, who without any notice to the petitioners and without holding any spot enquiry submitted a false report. B.D.O. pursued the matter to S.D.O. and upto Minister level. Under instruction of Private Secretary to the Minister-in-Charge, Forest Department, Government of West Bengal, Additional District Magistrate (Judicial), Howrah, informed S.D.O. Uluberia vide memo dated 20.5.99 to take up and dispose of the matter u/s 133 Cr. PC or otherwise being oblivious about pendency of the longstanding private dispute in Civil Court in T.S. No. 396/92 over the said private land. Sub-Divisional

Officer and Sub-Divisional Magistrate, Uluberia accordingly directed the Executive Magistrate, Uluberia, vide memo dated 28.5.99 to initiate a proceeding u/s 133 Cr. PC. The Executive Magistrate, in turn, started Misc. Case No. 160/2000 u/s 133 Cr. PC and issued a notice directing the petitioners to remove the kuchha latrine from the bank of pond on plot No. 1318 within one month and to show cause as to why the order should not be made absolute. The petitioners after their appearance, filed show-cause stating that civil suit being T.S. No. 396/92 is pending, where an order of injunction in the form of maintaining status quo in respect of the land including pond was passed on 18.2.94 and that latrine was constructed long ago in or about 1983 at a sufficient distance after taking precautionary measures and as such prayed for dropping the proceeding. The learned Magistrate by his order dated 16.9.2002 rejected the prayer of the petitioners.

3. Being aggrieved by, and dissatisfied with, the said order, the petitioners have come up before this Court.

4. Mr. Mitra, learned Counsel for the petitioners, relying upon the cases of State of M.P. v. Kedia Leather & Liquor Ltd. reported in 2003 SCC (Cri.) 1642 (Para 8) and K. Bhagirath Agrawal v. State of Maharashtra reported in 2005 SCC (Cri) 1191 contended that when the property belongs to private individuals and a civil dispute is pending between two families and no nuisance, not to speak of public nuisance is involved, and that the provision of Section 133 is not intended to apply to future likelihood or what may happen at some later point of time, the said Section 133 has no manner of application. Mr. Roy, learned Counsel for the State, fully supported the above submission contending that Section 133 has no application to private nuisance, if at all.

5. Nuisance may be either public or private. The remedy for the latter is a civil suit although what constitutes nuisance may be common to both classes. A public nuisance is something which is offensive to the public, an inconvenience, discomfort or hurt, annoying or endangering the safety of the whole community in general. A private nuisance may amount to a public nuisance if it affects the public generally. Section 133 provides a speedy and summary remedy in case of urgency where danger to public interest or public health is concerned. In all other cases, the parties should be referred for remedy under the ordinary law. For invoking the provision of Section 133, the Magistrate must have to be satisfied that - (1) it is a public nuisance, i.e., the number of persons injuriously affected is so considerable that they may reasonably be regarded as public or a portion of it, (2) it is not a private dispute between different members of the public for which the proper forum is the civil suit, and (3) it is a case of great emergency of imminent danger to the public interest. Evidence of long use by a party may be taken as equivalent to reliable evidence of non-existence of public right. If obstruction or nuisance is on some private property and yet action under the aforesaid section is taken, it would evidently mean interference with the exercise of the right of an individual to use his own property in a way and

manner he wants. In this context, reference may be made to the case of M.P. Perreira v. State reported in AIR 1967 Goa 1.

6. In the case on hand there is no dispute that the property on which the latrine and bathroom are said to exist, is a private property belonging to two families. There is nothing to suggest that existence of the said lavatory and bathroona has created any nuisance to the public or any pollution of water of the tank/pond which is the touchstone to pass an order u/s 183 Cr. PC. The provision applies only to existing and not to potential nuisance. i.e. what may become nuisance in future. Reference may be made to the cases of Kedia Leather & Liquor Ltd. (supra) and K. Bhagirath Agrawal (supra).

7. Accordingly, the conditions for invoking the provision of Section 133 Cr. P.C. being absent, the impugned order is not sustainable, and as such, the present revisional application be allowed and the order impugned be set aside.

8. Let a copy of this order be sent down at once to the learned Magistrate.

9. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.