
(2005) 07 MP CK 0112

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 8079 of 2002

Rambabu Sharma

APPELLANT

Vs

Santosh Kumar and Another

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

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

Citation : (2005) 3 MPLJ 526

Hon'ble Judges : Sugandhi Lal Jain, J

Bench : Single Bench

Advocate : Anil Khare, for the Appellant; Asim Dixit for State and None, for the Respondent

Judgement

S.L. Jain, J.

Invoking extraordinary jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (henceforth, "the Code"), the applicant has filed this petition for quashing the order dated 27-9-2002 passed by 1st Addl. Sessions Judge, Panna, in Criminal Revision No. 60/2000 which arose out of the order dated 19-6-2000 passed by Addl. District Magistrate, Panna, in Case No. 1/133/2000.

The facts giving rise to the petition are that a complaint u/s 133 of the Code was filed by respondent No. 1. Santosh Kumar before the Addl. District Magistrate Panna, who vide order dated 19-6-2000 directed the petitioner to arrange for flow of water in such a manner so that it may not cause any damage to the house of any one. Against this order, petitioner preferred a revision petition before the Court of Session. The said revision was registered as Cr. Rev. No. 62/2000 and the same was dismissed vide order dated 27-9-2002.

I have heard Shri Anil Khare, learned counsel for the petitioner and Shri Asim Dixit, learned counsel for the State. None appeared for respondent No. 1 at the time of hearing of the case.

Learned counsel for petitioner submits that petitioner has not caused any

obstruction and did not cause any public nuisance to attract section 133 of the Code. Land Khasra No. 2417/1 does not belong to the petitioner. It was purchased by his wife. He also submits that order dated 19-6-2000 could not have been passed by the Addl. District Magistrate. The revisional Court committed grave error in dismissing the revision petition.

Additional District Magistrate, Panna on the basis of material before him considered that the nuisance should be removed from public place or from the way and directed the petitioner to remove the nuisance. For directing a person to remove the nuisance, it is not necessary that he should be the owner of the property. Any person who has caused nuisance can be directed to remove the same. On the basis of spot inspection, the Addl. District Magistrate was satisfied that the nuisance has been caused by the petitioner, therefore, he directed the petitioner to remove the nuisance, and, it cannot be said that the order passed by the Addl. District Magistrate has resulted in miscarriage of justice.

So far as recording of evidence is concerned, section 133 of the Code does not make it incumbent on the magistrate to record the evidence before he makes an order. The expression used in section 133 is "on taking such evidence if any as he think fit". It is not the case of the petitioner that he wanted to lead some evidence and the Court did not permit him to lead the same.

When it was not incumbent on magistrate to record the evidence, the order passed without recording the evidence cannot be said to be illegal. The magistrate passed the order on the basis of spot inspection. The spot inspection done by the magistrate before passing the order cannot be said to be without jurisdiction. The magistrate was satisfied on the information received by him. The words "or other information" in section 133 of the Code are wide enough to entitle a Court to take action even on information derived from the private individual.

Learned counsel for petitioner vehemently submitted that the alleged nuisance originated in a private place.

This contention cannot be accepted. A nuisance in a public place may originate in a private place and the act or omission which constitute the nuisance may be in exercise of alright in respect of ones own property. A private proprietor may be guilty of acts done on his private property which may give rise to a public nuisance and inconvenience to those living in the neighborhood. Therefore, I do not find any illegality in the order of Addl. District Magistrate and, the revisional Court committed no error in dismissing the revision.

No case for interference in exercise of jurisdiction u/s 482 of the Code is made out. The petition is, therefore, dismissed.