

(1988) 04 PAT CK 0009
In the Patna High Court
Case No : Criminal Miscellaneous 7734/87

S. Azad Ahmad Rizvi and Others

APPELLANT

Vs

Md. Zia Uddin and Others

RESPONDENT

Date of Decision : 25-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 133(1), 138

Citation : (1988) PLJR 994

Hon'ble Judges : Ram Nandan Prasad, J

Bench : Single Bench

Advocate : Devendra Kumar Sinha, R.B. Roy "Raman" and J.K. Singh, for the Appellant; Jamilur Rahman, S.M. Ahmad and Mr. A.K. Monar, for the State, for the Respondent

Judgement

Ram Nandan Prasad, J.—This application has been filed for quashing the entire proceeding of Miscellaneous Case No. 223/86 T.R. No. 262/87 pending in the court of Executive Magistrate Patna City u/s 133 of the Code of Criminal Procedure. The proceeding was initiated on 7.3.1986 on the basis of an application filed by the opposite parties alleging therein inter alia that the petitioners were running a factory known as "Kas Engineering" on plot No. 249 in Mohalla Shah-Ki-Imli P.S. Khajekalan Patna City. It was alleged in that petition that the factory was constructed by encroaching upon the Ghair-Mazarua Aam Garhu Land and further that the running of the factory was a public nuisance causing injuries to the health and comfort of all the persons living in the surrounding areas and also hazardous to the houses in the vicinity. Notices were issued to the petitioners who appeared before the learned Magistrate and filed a show cause denying the allegations made in the application of the opposite parties. They further took the stand that the land had been settled to them and that the running of the factory was in no way hazardous to the people living in the vicinity or injurious to public health. Having heard the petitioners in respect of their show cause and having heard the learned lawyer for opposite parties (who are first party in the court below), the learned Magistrate observed that he

felt satisfied that under the circumstances it was necessary to initiate a proceeding u/s 133 of the Code of Criminal Procedure. In that context he by order dated 22.6.87 called upon the second party to adduce their evidences on the next date.

2. The contention of the petitioners is firstly is that the running of a factory is not covered by the provision of section 133 of the Code of Criminal Procedure and even if it be held as hazardous action under the Factories Act or the statute relating to pollution control may be initiated but a proceeding u/s 133 of the Code of Criminal Procedure is unwarranted. I am unable to agree with this contention. Clause "b" of Section 133(1) clearly covers such cases where conduct of any trade or occupation is injurious to the health or the physical comfort of the community. This Clause is wide enough to cover the case in question. The second contention on behalf of the petitioners is that the learned Magistrate after having become aware of the plea of the petitioners should have first made an inquiry u/s 137 of the Code of Criminal Procedure but instead of doing so he has immediately taken the aid of section 138 of the Code of Criminal Procedure and has called upon the petitioners (second party in the court below) to adduce evidence. In my opinion, this contention is also not correct. Since the petitioners denied in their show cause that the factory in question is not injurious to public health or the physical comfort of the community, and also denied that the public has any right to the land in question, the Magistrate had to make the inquiry as envisaged u/s 137 of the Code of Criminal Procedure. It is in the context of this inquiry that the Magistrate has called upon the petitioners (second party in the court below) to lead evidence because only when such evidence is produced before him u/s 137(2) Cr.P.C. that the Magistrate will be able to prima-facie form an opinion as to whether there is any reliable evidence in support of the denial of the petitioners.

3. In my opinion, therefore, the stage of proceeding in the court below is still within the ambit of section 137 Cr.P.C. and there is no illegality in the order passed by the learned Magistrate. Obviously, after having taken evidence in course of this inquiry the Magistrate will have to form his opinion whether the proceeding u/s 133 Cr.P.C. should continue or whether it should be brought to an end. He shall then pass necessary orders In accordance with law, and while doing so he will also keep in mind that a title suit is pending between the parties regarding right to the land in question. In view of the above, the application is dismissed.