

(2007) 08 JH CK 0020
In the Jharkhand High Court

Sachidanand Singh and Deepak Kumar @ Dipak Kumar Singh	APPELLANT
Vs	
The State of Jharkhand, Shri Rajkeshwar Singh, Shri Gopal Krishna Prasad and Shri Anil Kumar Sinha	RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 133

Citation : (2007) 08 JH CK 0020

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Singh, J.—The present revision application has been preferred by the petitioner Sachidanand Singh and others against the order dated 27.10.2006 passed by learned Sub Divisional Magistrate, Dhalbhum, Jamshedpur in Misc. Case No. 734(A)/2004 u/s 133 Cr.P.C. by which the petitioners have been directed to remove obstruction from the plot in the proceeding.

2. The learned SDM, Dhalbhum, Jamshedpur initiated a proceeding u/s 133 Cr.P.C. on the report of Circle Officer, Jamshedpur on a petition filed by the private opposite parties on 5.7.2004 that the petitioners were trying to encroach upon the land in question described in the schedule situated in Mauza Ghorabandh Khata No. 45, Plot No. 128 and 129, 3x30" drain through which the drainage water of the opposite party and other Mohall people used to flow on the next part plot No. 115 and 133 which belongs to Adavasi. The petitioners appeared on notice and filed show cause in which they denied all the allegations and claimed that the land lying vacant, adjacent to their boundary wall was coming in their possession for last 35 years. A question was also raised that the land in question was not public land. Therefore the proceeding u/s 133 Cr.P.C. was not maintainable.

3. The learned trial court after examining the witnesses and going through the documents brought on record by both sides came to conclusion that the

petitioners were trying to obstruct drainage water going on the public land resulting in water logging and pollution of the area resulting in public nuisance. This revision was preferred on the grounds that the learned court below has exceeded its jurisdiction by initiating the proceeding itself.

4. According to learned Counsel for the petitioners the impugned order dated 27.10.2006 was liable to be set aside on the grounds that there was private dispute between the parties and the learned SDM has no jurisdiction to decide such dispute u/s 133 Cr.P.C. As such the impugned order be set aside. In support of this contention the learned Counsel for the petitioners has relied upon 1995 (Supp. 4) 54, in which the Hon'ble Apex Court has been pleased to hold that civil dispute cannot be subjected for decision u/s 133 Cr.P.C.

5. The learned Counsel appearing for the respondents O.Ps submitted that since the matter was of urgent nature in which petitioners were obstructing the flow of drainage water of the mohalla people including the respondents O.Ps from being released on public land, the learned SDM correctly and rightly took up the matter and decided it under the proceeding u/s 133 Cr.P.C.

6. The learned Counsel for the respondents have relied upon 2005(1) E C C 236, 2006(4) E C C 100, Budh Singh and Others Vs. Hapu Ram and Others, and 2000 ECC 1270

7. I have gone through the material on records. It is not disputed fact on record that the proceeding was initiated on a petition of the opposite party on 5.7.2004 after which the Circle Officer conducted enquiry vide annexure-A at page 26 and 27. It mentions specifically that the respondents were having their houses on the plot in question and their drainage water was falling in plot No. 115 and 133, the vacant lands. It also mentions that the petitioners were in process of encroaching the vacant land. Annexure-C and -D further mention that during pendency of this proceeding another attempt was made on 10.5.2006 to erect a wall on the said land and a proceeding u/s 107 Cr.P.C. was initiated. I further find from the photo copy of the evidence filed by the petitioners and recorded by the learned SDM during pendency of this enquiry that the petitioners Sachidanand vide annexure-G at page 46 and 47 has admitted that he has no papers regarding purchase of the said land nor any documents in support of its claim that the mutation was made in his favour. He has claimed that he got an agreement from one Gauri Rani Chakraborty in the year 1981 but thereafter no document was produced.

8. I further find that the facts of the case relied upon by the petitioners counsel in Vasant Manga Nikumba v. Baburao Bhikanna Naidu is regarding some shops which were found in dilapidated condition and asked to be removed by the municipal corporation because they were likely to fall, u/s 133(1)(d) of the Cr.P.C. As against this the decision relied upon by the opposite parties in 2005 (1) ECC 236 the Hon'ble Apex Court held that public nuisance is alleged and found by the enquiry officer to cause any obstruction in health and physical comfort of the respondents was subject matter of the proceeding. In that case

loading and unloading of dry chilies was the subject matter In 2006 (4) ECC 100 His Lordship found and held that the obstruction caused by straw hut of the passage to the villagers was subject matter of the proceeding. In 2000 ECC 1270 his Lordship was kind enough to up hold the direction of removal of encroachment causing obstruction on public passage after due enquiry in presence of the parties. Similarly in Budh Singh and Others Vs. Hapu Ram and Others, Hon"ble Rajasthan High Court up held the decision of the enquiring court that the nature of the grievance was of public nuisance.

9. It is admitted facts on the record that the drainage water of the area flowed through the drain constructed by the respondents on an open land belong to public. The nature of obstruction caused to its flow was the subject matter of enquiry as it would appear, resulting in public nuisance. It further appears that petitioners have made oral assertion that they have purchased the land on the basis of an agreement of 1981. Both sides have adduced evidence and produced documents in support of the case and the impugned order was passed after due consideration of the case. The report of the Circle Officer, Officer Incharge vide annexure-A page 27 and B shows the nature of the dispute as well as resultant public nuisance.

10. Having considered all the facts and circumstances mentioned above, I find that the learned SDM. Dhalbhum, Jamshedpur has not exceeded its jurisdiction in holding the enquiry u/s 133 Cr.P.C. regarding obstruction caused by the petitioners causing public nuisance.

11. In the result this revision application is found without merit and is hereby dismissed but without costs.