

(2003) 03 JH CK 0023

In the Jharkhand High Court

Case No : Criminal M.P. No. 1062 of 2002

Smt. Ranjana Paul

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 13, 397(3), 482

Citation : (2004) CriLJ 1505 : (2003) 2 JLJR 5044

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : M.M. Pal, for the Appellant; Assistant Public Prosecutor and Ashok Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In the instant application the petitioner has prayed for quashing of the Judgment/order dated 14-8-2002 passed by the 7th Additional Sessions Judge, Dhanbad in Cr. Rev. No. 521 of 1998 filed by the petitioner whereby the learned Sessions Judge dismissed the revision application and confirmed the order dated 9-3-1998 passed by the learned Sub-Divisional Magistrate, Dhanbad in M.P. case No. 1995 of 1993 in a proceeding u/s 133, Cr.P.C. directing the second party i.e. petitioner herein to clear the drain within one week which was blocked by the petitioner causing public nuisance.

2. The facts in short giving rise to this application are that Smt. Prema Jha opposite party No. 2 herein filed an application before the Officer-in-charge of Dhanbad police station alleging therein that Smt. Ranjana Paul and her husband, who are the next door neighbour of her, have obstructed the flowing of municipal drain due to which dirty and rain wasters have started accumulating causing public nuisance.

3. The learned Sub-Divisional Magistrate initiated a proceeding u/s 133, Cr.P.C. on the basis of the enquiry report of the Officer-in-charge of the said police

station and then after enquiring the matter, the learned Sub Divisional Magistrate in exercise of his power u/s 133, Cr.P.C. passed an order against the petitioner/ second party holding that the disputed land in which the alleged drain situated is a public land and therefore, direction was given to remove the obstruction within one week. Against the order of the Sub Divisional Magistrate the petitioner filed Cr. Rev. No. 52 of 1998 before the Sessions Judge, Dhanbad, which was heard by the VIIth Additional Sessions Judge, Dhanbad and by his order/ judgment dated 14-8-2002 the said Cr. Revision application of the petitioner was dismissed on merit after hearing the parties.

4. Mrs. M. M. Pal the learned counsel for the petitioner has submitted that without affording an opportunity to adduce evidence, the order was passed by the learned Sub Divisional Magistrate and therefore, the same is absolutely bad in law. The learned counsel for petitioner further submits that when the proceeding u/s 133, Cr.P.C. was dismissed for default by the learned Sub Divisional Magistrate, a Cr. Rev. No. 168 of 1996 was filed before the Sessions Judge, Dhanbad by Smt. Prema Jha. In the said Cr. Revision, the learned Sessions Judge, after setting aside the order of the learned Sub Divisional Magistrate remitted the matter back to the trial Court with a direction that after giving due notice to the parties to adduce evidence in support of their respective, claim, the enquiry should be completed within a period of two months from the date of receipt of the order.

5. Mrs. Pal further submits that in spite of the specific direction by the Sessions Judge, the Sub Divisional Magistrate did not afford any opportunity to adduce the evidence and therefore it was clear violation of the order of the Sessions Judge and as such the order of the Sub-Divisional Magistrate was bad in law.

6. In the impugned Judgment, the learned VIIth Additional Sessions Judge has considered the submissions of the petitioner and has held that on 5-12-1997, the learned Sub Divisional Magistrate directed both parties to adduce their evidence in support of their respective claims but even after allowing three adjournments, none of the parties adduced any oral evidence.

7. I find that the learned Revisional Court has discussed the case in detail and then has come to the conclusion that the learned Magistrate has rightly held that the disputed land is a public land in which municipal drain stands through which dirty water of the first party/opposite party was passing but the same was blocked by the second party/petitioner as a result of which there was accumulation of dirty water causing public nuisance and thereby he dismissed the revision application on the point of facts.

8. Since there are concurrent findings of facts of two courts and therefore, this Court cannot substitute its own finding by reappreciating the evidence and materials on record. Secondly since the petitioner has already availed the remedy of revision before the Sessions Judge and after having failed there. The same party cannot be allowed to agitate the same point before this Court by

filing an application u/s 482, Cr.P.C. which is in fact second revision application in the garb of application u/s 482, which is barred u/s 397(3), Cr.P.C.

9. The learned counsel for the petitioner has relied on a decision of the Kerala High Court in the case of M.P. Parameswaran Nair Vs. P. Madhavan Nair and Others, and submitted that initiation of the proceeding u/s 133, Cr.P.C. was itself wrong as the provision of Section 133 is applicable only where the obstruction caused on a public thorough fare is unlawful. The said decision is not applicable in the facts and circumstances of the present case, as both the Courts below have already held that the petitioner has obstructed the municipal drain which is situated on public road.

10. In that view of the matter, I do not find any illegality in the impugned order dated 14-8-2002 passed by the VIIth Additional Sessions Judge, Dhanbad in Cr. Rev. No. 52 of 1998.

11. In the result, this application is dismissed.