

(2022) 07 GAU CK 0015
In the Gauhati High Court
Case No : Criminal Petition No. 01 Of 2022

Sukkur Ahmed Barbhuiya

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 147, 133, 482

Citation : (2022) 07 GAU CK 0015

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : N. Islam, K. K. Parashar, R. Choudhury

Final Decision : Dismissed

Judgement

1. Heard Mr. N. Islam, learned counsel for the petitioner and also heard Mr. K. K. Parashar, learned Addl. PP for State respondent No. 1 as well as Ms. R. Choudhury, learned counsel for respondent No. 2.

2. In this application, under Section 482 of the Code of Criminal Procedure, the petitioner has put to challenge the judgment and order dated 21.02.2022, passed by the learned Addl. Sessions Judge, (FTC), Cachar, Silchar, in Criminal Revision Case No.25/2022.

3. It is to be noted here that vide the impugned judgment and order, the learned Court below has allowed the Criminal Revision preferred by respondent No. 2 and set aside the order dated 22.11.2021, passed by the learned Addl. District Magistrate, Cachar, Silchar in Misc. Case No.694m/2021.

4. The factual background, leading to filing of the present petition is briefly stated as under:-

"The petitioner purchased a plot of land measuring 6 katha, situated at Barakpar village from one Saleh Ahmed Laskar by executing a registered sale deed, dated 18.04.2021. Prior to that, the vendor purchased the same land by registered sale

deed, dated 05.04.2010. There is a private path connected to a public path attached to the said plot of land and the said fact is mentioned in both the sale deeds. Then, after purchasing of the said land by the petitioner, the respondent No. 2 most illegally and maliciously blocked the path which is only way to ingress and egress of the petitioner's land. Thereafter, the petitioner had filed an application before the District Magistrate, Cachar, Silchar under Section 147/133 Cr.P.C. praying for passing necessary order for removal of obstruction made by the opposite party. The learned Addl. District Magistrate then referred the matter to the Officer-in-Charge of Silchar Police Station for enquiry and report. Accordingly, a report was submitted by the police and on being satisfied, the learned Addl. District Magistrate, Cachar, Silchar passed an order on 12.11.2021 and issued notice to the opposite party and directed him to remove the obstruction from the path of the petitioner within 7 (seven) days. Thereafter, the learned Addl. District Magistrate, Cachar, Silchar passed another order, dated 27.01.2022 asking the concerned Police to remove the obstruction created by opposite party under Section 133 Cr.P.C. But, the opposite party did not comply with the order. Instead on 01.02.2022, the respondent No. 2 preferred revision petition before the Learned Sessions Judge, Cachar, Silchar and vide impugned Judgment and Order, dated 21.02.2022, the learned Court below has set aside the order passed by the learned Addl. District Magistrate, Cachar, Silchar on 12.11.2021 and 27.01.2022."

5. Being aggrieved, the petitioner approached this Court by filing the present petition, on the ground that the impugned order passed by the learned Addl. Sessions Judge, Cachar, Silchar suffers from manifest illegality. The learned counsel for the petitioner submits that the learned Addl. District Magistrate, Cachar, Silchar has rightly passed the order under Section 133 Cr.P.C. directing the respondents to remove the obstruction and the learned court below has illegally set aside the same. Therefore, it is contended to set aside the impugned judgment and order passed by the learned Addl. District and Sessions Judge, Cachar, Silchar.

6. Ms. R. Choudhury, learned counsel for the respondent No. 2 submits that the dispute between the parties are private dispute and is of civil nature and the jurisdiction under Section 133 Cr.P.C. cannot be invoked to resolve a private dispute and the aggrieved party may approach the Civil Court in this regard and admittedly the property is a private property having no concern with the public and therefore, it is contended to dismiss the petition

7. Having heard the submission of the learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also the ground mentioned in the petition. From the submissions of learned Advocates of both sides and also perusal of the petition and the documents placed on record, I find that the question to be answered by this Court is whether the provision of Section 133 Cr.P.C. can be invoked to resolve a private dispute. In this regard, reference may be made to a decision of the Hon'ble Supreme Court

in the case of *Suhelkhan Khudyarkhan and Another-vs-State of Maharashtra and Others* in Crl. Appeal No.1039/2005, wherein, Hon'ble Supreme Court in no uncertain terms stated that proceeding under Section 133 Cr.P.C. are not intended to settle private dispute between different members of the public, they are in fact intended to protect the public as a whole against inconvenience. Similar view is adopted by Jammu and Kashmir High Court in the case of *Girdhari Lal-vs-State of Jammu and Kashmir*; reported in 2018 SCC OnLine J & K 793, wherein, it has been held that Section 133 Cr.P.C. is not intended to settle the private dispute between the parties but to ensure that public is protected from the inconvenience of a public nuisance.

8. In the case in hand, admittedly, the road which is allegedly blocked by respondent No. 2 is a private road connecting the land of the petitioner with a public road. And admittedly, no inconvenience is caused to the public by the said action of the respondent and as such, the dispute between the petitioner and the respondent No. 2 is purely a private dispute and as such, provision of Section 133 Cr.P.C. cannot be invoked to settle the aforesaid private dispute.

9. The learned Addl. District and Sessions Judge, Cachar, Silchar, by its judgment and order, dated 21.02.2022 in Paragraph-19 categorically stated that-

"Situating thus, it is apparent from the impugned order that the order, dated 12.11.2021 was passed, on the basis of police report, primarily with an apprehension of breach of peace between the private parties. When the dispute is between two private parties, executive powers ought not to have been exercised, in the said subject matter, by issuing orders under Section 133 Cr.P.C."

10. Again the learned Court below, in Paragraph No. 20 stated that –

"Situating thus, in view of foregoing discussion, I am of the measured opinion that learned Executive Magistrate, Cachar, Silchar erred in passing order on 12.11.2021 in case No.694m/2021 under Section 133 Cr.P.C., which order is arbitrary, illegal and not in accordance with law and the same is liable to be set aside".

Accordingly, the learned Court below has set aside the order passed by the Executive Magistrate on 12.11.2021.

11. Thus, having examined the impugned judgment and order in the light of the law laid down by the Hon'ble Supreme Court in the case of *Suhelkhan* (supra), this Court is of the considered opinion that the impugned judgment and order, dated 21.02.2022 passed by the learned Addl. District and Sessions Judge, Cachar, Silchar in Crl. Rev. No. 25/2022 suffers from no illegality or infirmity requiring any interference of this Court.

12. In the result, I find no merit in the petition and accordingly, the same stands dismissed. Interim order, if any, stands vacated.

The parties have to bear their own cost(s).