
(1962) 11 MP CK 0025
In the Madhya Pradesh High Court

The State of Madhya Pradesh

APPELLANT

Vs

Manji Raghu and Others

RESPONDENT

Date of Decision : 05-11-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133

Citation : (1964) CriLJ 94

Hon'ble Judges : T.P. Naik, J

Bench : Single Bench

Judgement

T.P. Naik, J.—The non applicants, Manji Raghu and Ramnik Lal Rathore, are partners of Shri Swami NerayarN Rice Mill, Rajnandgaon, (hereinafter referred to as "the Mill¹"). The Mill is situated in Chowkadiyapara locality of the town of Rajnandgaon. On 30-5-1961, a number of inhabitants of the locality filed an application u/s 133 of the Code of Criminal Procedure (hereinafter referred to as "the Code") against the non applicants as owners of the Mill alleging that the husk (Kondha and bhusa) produced by the working of the Mill and the working of the Mill at night was injurious to the health and physical comfort of the community and prayed that the nuisance be removed.

2. The Sub-Divisional Magistrate, Rajnandgaon, holding that the flying of the husk as well as the working of the Mill at night was a nuisance injurious to the health and physical comfort of the inhabitants of the locality conditionally ordered the non-applicants to remove- the aforesaid nuisance within forty-five days. The conditional order directed that a 30 ft. wall enclosure be erected and a shed be made at the place from where the husk is ejected. It further directed that the Mill should stop working between 10 p.m. and 5 a.m.

3. The aforesaid order was challenged in revision before the Sessions Judge, Durg, at Rajnandgaon, in so far as the direction regarding the stopping of the Mill between 10 p.m. and 5 a.m. was concerned. The order directing the erection of a wall enclosure and a shed to prevent the husk from flying out was not challenged.

4. The learned Sessions Judge has reported the case u/s 438 of the Code recommending that the order directing that the working of the Mill be stopped from 10 p.m. to 5 a.m. was not justified and that it be set aside. His grounds are:

(1) That the non applicants had in their examination stated that the Mill worked at night only during the season which was of about three months' duration.

2. That the Mill did not produce much noise as it was run by an electric motor, and consequently it could not possibly disturb the sleep of the inhabitants in the locality.

3. That the Mill had been running under a license granted by the Municipal Committee, Rajnandgaon; and the Municipal Committee, when granting the license, had taken into consideration the health and physical comfort of the community.

4. That the mere fact that noise created by the working of the Mill disturbed the sleep of just one or two persons whose houses are just quite close to the mill could not warrant a conclusion that it was injurious to the health or physical comfort of the community or the inhabitants of the locality.

5. That the conclusions of the learned Magistrate were based on a gross misappreciation of evidence of record amounting to misapprehension.

5. Taking the aforesaid grounds seriatim, I am of opinion that the fact that the Mill worked at night only during the season, which is of about three months duration, is not enough to disentitle the inhabitants of the locality to relief u/s 133 of the Code if it is established that the working of the Mill at night during the three months in the season is a nuisance. We shall, therefore, have to examine whether the working of the Mill at night even during the three months in the season effectively injured the health or physical comfort of the community.

6. Similarly, the statement of the non applicants accused that the Mill did not produce much noise as it was run by an electric motor is not conclusive of the fact of its not being a nuisance. It will have to be determined on evidence whether the Mill, even though run by an electric motor, produced such noise as effectively and substantially interfered with the health and physical comfort of the community.

7. It is then said that as the Mill had been running under a license granted by the Municipal Committee, Rajnandgaon which must have taken into consideration the health and physical comfort of the community when granting the license, it would not be expedient to take action against the non-applicants u/s 133 of the Code.

It is true that various cases have laid down that it is generally inexpedient that a Magistrate should take action in such cases, for these matters are left by the legislature to the control of the Municipal Boards; but, at the same time, in these cases it is recognized that the existence of an alternative remedy does not deprive the Magistrate of his jurisdiction u/s 133 of the Code if he comes to the

conclusion that a nuisance existed which entitles the persons aggrieved to relief under that section: (see Lalman Vs. Ch. Bishambhar Nath and Raghunandan Prasad Vs. Emperor, .

In Lalman Vs. Ch. Bishambhar Nath , a Magistrate had taken action u/s 133 of the Code to abate a nuisance caused by the working of a lime Win; and In view of a corresponding provision in the local ^Municipalities Act, the right of the Magistrate to take -action under that section of the Code was challenged. The learned Judge overruled the contention and held that there was jurisdiction: in the Magistrate to act u/s 133 of the Code, although the order was set aside -on other grounds.

In Rajagopala v. Samdum Begum, AIR 1943 Mad 357 answering a similar contention, Byers J. cited with approval the decision in Lalman Vs. Ch. Bishambhar Nath and further agreed with the contention of the learned Public Prosecutor in- that case that as the Code was an Act of the Indian Legislature, its provisions could not in any way be affected by a local Act, In Krishna Mohan Banerjee V. A. K. Guha, AIR 1920 Cal 550: 57 Ind Cas 829 it was held that the noise made in the carrying on of a lawful trade under a licence, if injurious to. the physical comfort of the community, was a nuisance and that the Magistrate had jurisdiction to proceed u/s 133 of the Code for abatement of the nuisance, it appears that the mere grant of a license by the Municipal Board to carry on a particular trade or business , within the municipal limits of the town does not entitle the person concerned to commit a public nuisance which is actionable u/s 133 of the Code. I am, there-: fore, of opinion that even if there was a remedy in the Municipalities Act as to the adequacy and efficacy of which I say nothing, that by itself could not bar the ; jurisdiction of the Magistrate to act u/s 133 of j the Code.

8. The fourth ground is equally devoid of substance. It is true that if the working of the Mill at night during the season disturbed the sleep of just one or two persons whose houses were just close to the Mill, it may not be enough. What the section requires is that the trade or occupation in question must be shown to interfere with. comfort to a substantial or considerable extent, so that a large section of the public are affected injuriously, in Emperor v. Fazal Din, 12 Cri LJ 146 the learned Judge pointed out that there could be no doubt that action by thai Magistrate was authorized if the trade in question was injurious to the physical comfort of the community; but suqh rulings as Shadi v. Empress, 17 Pun Re. 1888 Cr, Mrs. Barrier v. Empress, 47 Pun Re 1888 Cr and Rattigan v. Municipal Committee of Lahore, 106 Pun Re 1888 showed that all the circumstances must be taken into account; that the interference with public comfort must be considerable; that a considerable section of the public must be affected injuriously, and that general equitable principles must not be lost sight of. The connotation of the expression "community" was examined by Kendall, J. in Raghunandan Prasad Vs. Emperor, Answering that contention that a nuisance to the neighbours would not amount to a nuisance to the community, the learned

Judge said:

The- paragraph to which I have referred in Section 133 of the Code does not, it is true, mention the physical comfort of neighbors but the physical comfort of the community, and I have been asked on behalf of the opposite party to hold that the terms "neighbours" and "community" are for the purpose of this section interchangeable. Certain decisions have been pointed to AIR 1920 Cal 550, *Berckefeld v. Emperor*, ILR 34 Cal 73 and *Indra Nath Banerjee v. Queen Empress*, ILR 25 Cal 425 among others, in which action has been taken under this section in somewhat similar circumstances, and in which, so far as can be judged from the reports, the evidence related to the physical comfort of neighbors. Moreover, it has been- pointed out that chapter 10 relates to "public nuisances", and although the words in the paragraph are not "the physical comfort of the public" it would be very difficult to hold, after reading the whole of the section, that the legislature really intended to discriminate between the public and the community. In Section 268 of the Indian Penal Code a person is said to be guilty of a public nuisance who "does any act which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity". If the public nuisances referred to in chapter X of the Code of Criminal Procedure are equivalent to the public nuisances defined in Section 268 of the Indian Penal Code, the "public" and again people in general who dwell or occupy property in the vicinity", or in other words neighbors, must be regarded as to all intents and purposes the same body of people. I can find no authority for distinguishing the meaning of the word "community" (which according to the dictionary is a relative term) either from the "public" or the "neighbors". It is certainly curious that the word "community" is used in the third paragraph of Section 133, whereas references in other parts of the section are to the public or persons living or carrying on business in the neighborhood etc., but after considering the matter to the best of my ability I do not think there is sufficient reason for making a definite distinction, and for holding that a man may carry on a trade or occupation or keep goods or merchandise" that is injurious to the health or physical comfort of his neighbors or of the public without becoming liable to an order u/s 133, merely on the ground that there may be some part of the community which is not affected.

I fully agree with the aforesaid observations. I am, therefore, of opinion that if an act is found to be injurious to the physical comfort of the neighbours it must also then be held that it is injurious to the physical comfort of the community. After all, a community only consists of individuals and if a body of individuals are injuriously affected by a particular trade, the interests of the community would best be served by protecting them from injury. Applying these principles, in *Piracy Mai v. Emperor*, 1904 PR 9 it was held that the working of a rice-husking machine throughout the whole night in a residential quarter being injurious to the comforts of the neighbourhood was public nuisance. In- AIR 1934 193 (Nagpur) *Niyogi, A. J. C.* (as he then was) held that the noise of a mill which caused discomfort to the residents of the locality was a nuisance within the

meaning of Section 133 of the Code; and an order directing cessation of work from 9 p.m. to 6 a.m. was affirmed.

9. It is then urged that the Mill had been working for over twenty-five years and that if it had so worked without any complaint from the neighbors, there was no justification for imposing restrictions on its working now. As was pointed out in *Sheikh Mohidin, 2 Weir 59* no man can acquire a prescriptive right to commit a public nuisance. Thus Ions enjoyment could not legalize a public nuisance. It is no answer to the petition u/s 133 of the Code of the aggrieved persons to say that the Mill has been in existence in the locality for a long time.

10. The criticism of the learned Sessions Judge that the order of the learned Magistrate was based on a gross (Disappreciation of evidence amounting to misapprehension is equally without substance. I have perused the order of the learned Magistrate. In paragraphs 8 to 12 Of his judgment, he has given good and sufficient reasons why he was accepting the evidence of the witnesses for the prosecution. He had found considerable support to the pro-solicitation evidence in the testimony of Maheshwar (D. W. "3), and it cannot be said that there was no material before him on which his conclusion that the working of this Mill was injurious to the health and physical comfort of the community could be, justified. It is true that the witnesses for the prosecution had not stated in their earlier statements that the noise produced by the Mill disturbed their sleep and caused physical discomfort to them at night. But, even so, their omission to so state in those statements would not justify a conclusion that the noise of the Mill was not in fact injurious so as to cause serious discomfort to the neighbors.

11. In my opinion, the order of the learned Magistrate was proper and did not require any interference in revision.

12. The reference is accordingly rejected.