
(2007) 03 AHC CK 0058
In the Allahabad High Court

Yogeshwar Prasad @ Ugheshwar

APPELLANT

Vs

Ram Sakal Patel and State of U.P.

RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 137, 138, 2

Citation : (2007) 5 ADJ 414

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard Sri Ram Niwas Singh and Sri V.K.S. Chandel, learned Counsels for the petitioner, Sri Sadanand Singh Advocate for the caveator and learned A.G.A. for the State.

2. The instant writ petition arise out of proceeding u/s 133 Cr.P.C. The petitioner moved an application before the police that the respondent No. 1 has closed the public path. The Station House Officer, Police Station Mugalsarai, District Chandauli submitted a report on 25.2.2005 with a recommendation to initiate proceedings u/s 133 Cr.P.C. On the basis of the aforesaid report, a preliminary order was passed issuing show cause notice u/s 133(1) Cr.P.C. to the respondent No. 1 directing him to remove the obstruction from the public path or show cause why the obstruction should not be removed forcibly fixing 15.4.2005. The respondent No. 1 denied the existence of any path way by filing a reply. On the receipt of the said objection, the Sub Divisional Magistrate, Chandauli called for a report from the Naib Tehsildar. An inquiry was conducted and the Naib Tehsildar submitted his report dated 13.12.2005 stating therein that the respondent No. 1 had caused obstruction by constructing 5 feet wall adjoining the land of the petitioner. The respondent No. 1 filed his objection to the aforesaid report of the Naib Tehsildar. It also transpires that there was some dispute between the petitioner and Raghuveer and others including Pancham, father of the respondent No. 1, which led to institution of Original Suit No. 23.4 of 1977. The suit was

decreed by the trial court and the defendants filed a Civil Appeal No. 402 of 1980 Raghuvver and Ors. v. Baleshwar and Ors. A settlement was arrived at during the pendency of the appeal and the said appeal was decided in the terms of compromise. The Sub Divisional Magistrate, Chandauli came to a conclusion that the dispute between the petitioner and respondent No. 1 appears to be a private dispute between two parties and, therefore, the proceeding u/s 133 Cr.P.C. is not maintainable. This order was challenged in Criminal Revision No. 78 of 2006, which stands dismissed vide order dated 17.2.2007. Both the orders are impugned in the instant writ petition.

3. The submission on behalf of the petitioner is that the courts below have failed to consider the material on record and the findings recorded by the two courts are based on misreading of documents besides being perverse and against the material on record. It is submitted that in the original suit No. 234 of 1997 Baleshwar and Ors. v. Raghuvver and Ors. a Commissioner's report dated 12.9.1997 was submitted which indicates that the disputed land is the subject matter of proceeding u/s 133 Cr.P.C. and has been shown to be a passage. Sri Ram Niwas Singh has also argued that the report of Naib Tehsildar affirms his contention that the obstruction created by the respondent No. 1 amounts as a nuisance created for the public at large. The compromise filed in Civil Appeal No. 402 of 1980 was also misread. The next contention of the counsel for the petitioner is that if there was any evidence in support of the denial of public path, the proceeding u/s 133 Cr.P.C. should have been stayed in view of sub Section 2 of Section 137 Cr.P.C. The Sub Divisional Magistrate has failed to follow the procedure u/s 138(1) Cr.P.C. and the impugned judgment and the impugned orders are illegal, arbitrary and not sustainable in law.

4. Reliance has been placed on a decision of this Court in the case of Brij Kirhore Rai v. State of U.P. and ors. 2002(45) ACC, 834.

5. Counsel for the caveator has supported the two judgments of the courts below and has submitted that the subject matter of the instant dispute was the same in the original suit No. 234 of 1977. This itself affirms that there is a dispute between two parties inter-se and the courts below were correct in their approach while holding that it is a dispute between two private parties and finally dropped the proceedings u/s 133 Cr.P.C.

6. Learned A.G.A. has supported the contention of the learned Counsel for the caveator.

7. After hearing the respective counsels at length and going through the provisions of Section 133 Cr.P.C, it is apparent that the provisions relate to public nuisance and provisions can be invoked only if the public at large faces inconvenience obstruction, or nuisance, or such obstruction, or nuisance is unlawful on account of the act of the person concerned, or conduct of any trade or occupation, or on account of construction, or disposal of any substance is dangerous to health, then initially a conditional order is to be passed causing

such obstruction or nuisance, trade, or occupation to be removed or desist from carrying on, or to remove in a manner as directed. The explanation appended to Section 133(2) Cr.P.C. defines a "public place" which includes property belonging to the State camping grounds and grounds left unoccupied for sanitary or recreative purposes. Once the notice is issued, it is the power of the Magistrate to get a local investigation or examination of the area and pass appropriate orders.

8. In the present case, the proceedings were dropped after recording a satisfaction that the dispute appears to be between two parties and it does not call for interference u/s 133 Cr.P.C. In the case of Brij Kishore Rai (supra) relied upon by the counsel for the petitioner has no application to the facts of the present case. In the said case, after the notices were issued, there was a denial and after the Magistrate initiated the proceedings and was satisfied on the basis of local inspection that the petitioner has obstructed public path by raising construction as well as stopping flow of water of Nabdan, the conditional order was made absolute. So far the present case is concerned, the Magistrate has declined to proceed in the matter on the ground that it is a private dispute. In the case of Vasant Manga Nikumba and Ors. v. Baburao Bhikanna Naidu and Ors. 1995 Supp (4) Supreme Court Cases, 54, the Apex Court ruled that the object and purpose of Section 133 Cr.P.C. is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately, irreparable damage would be done to the public at large. Similar view was expressed in the case of State of M.P. Vs. Kedia Leather and Liquor Ltd. and Others, For a ready perusal, extract of paragraph 8 of the case of State of M.P. v. Dedia Leather & Liquor Ltd. And others is quoted below:

Section 133 of the Code appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is apart of the heading "public nuisance". The term "nuisance" as used in law is not a term capable of exact definition and it has been pointed out in Halsbury "s Laws of England that "even at the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort". In Vasant Manga Nikumba and Ors. v. Baburao Bhikanna Naidu (deceased) by Lrs. and Anr. (1995) (4) SCC 54 it was observed that nuisance is an inconvenience which materially interferes stith the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapses etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable damage would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time.

9. On the basis of what has been discussed above, it is clear that the power u/s 133 Cr.P.C. should be exercised to prevent public nuisance but not for private nuisance. It is condition precedent that the act should be offensive against the public at large. In the present case, counsel for the petitioner has not substantiated and supported this requirement of law and, therefore, I conclude that the judgment and orders of the courts below are absolutely correct and does not call for any interference. The writ petition lacks merit and is accordingly dismissed.