

Pawan Lath Vs. Vinod

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Court : Madhya Pradesh

Decided On : Mar-19-2013

Appellant : Pawan Lath

Respondent : Vinod

Advocate for Def. : Shri. M.K.Tripathi, Shri. Pramod Choubey

Advocate for Pet/Ap. : Shri. Pushpendra Dubey

Judgement :

Mcr.C.No.892 o

19. 03.13 Shri Manish Datt, Senior Advocate assisted by Shri Pushpendra Dubey, counsel for the applicant. Shri M.K.Tripathi, counsel for the respondent No.1. Shri Pramod Choubey, counsel for respondent No.2. Although this matter is listed today for admission and consideration of the stay application IA No.1518/13 but in the available scenario of the matter instead to hear only on such question, with the consent of the parties, the matter is heard finally.

ORDER

2. The applicant has filed this petition under section 482 of the Cr.P.C being aggrieved by the order dated 10.1.13 passed by the Addl. Judge to the Court of Addl. Sessions Judge (FTC), Burhanpur in Cr.R.No.151/12 affirming the interim order dated 9.11.12 passed by the SDM, Burhanpur in Criminal Case No.4/12, whereby in a complaint filed by respondent No.1 under section 133 of the Cr.P.C,

some interim order restraining the applicant to carry-out his industrial activity, has been stayed without complying the direction given by the revisional court on some earlier occasion.

3. Learned Senior counsel appearing on behalf of the applicant, after taking me through the impugned orders and the averments of the petition so also the earlier order of the revisional court dated 13.9.12 passed in Cr.R.No.99/12 argued that after filing the aforesaid complaint by respondent No.1 in the Court of SDM Burhanpur some interim order was passed by such court on dated 28.8.12 whereby the applicant was directed to close his industry. Such order was challenged before the subordinate court, on which, by setting aside such order, the case was remitted back to the SDM with certain direction to decide afresh. In continuation, he said that after remanding the matter, instead to decide the same in compliance of aforesaid direction of the revisional court in pendency of the same by passing the interim order dated 9.11.12, again the applicant was directed to close his factory for the reasons stated in such order. On challenging such order before the subordinate revisional court, by affirming the same, the revision was dismissed, on which, he has come to this court with this petition.

4. He made his limited prayer before this court saying that in view of the settled proposition after remanding the matter, the SDM did not possess the power to pass any interim order. The SDM was bound to comply directions of the sessions court strictly and, in such premises, the interim order, being contrary to law ought to have been set aside by the revisional court but the revisional court has also committed error in affirming the same and, in such premises, he prayed that by setting aside the aforesaid interim order, case be remitted back to the SDM with a direction to decide the same on merits in compliance of the direction of the revisional court order dated 13.9.12 passed in Cr.R.No.99/12.

5. Counsel of respondent No.1, responding the aforesaid arguments firstly justified the impugned order but in response of some query of the court he fairly stated that with appropriate direction, the case be remitted back to the SDM to decide the same afresh strictly in compliance of the aforesaid order of the revisional court dated 13.9.12 within some time bound schedule and prayed to dispose of this

petition accordingly.

6. Before proceeding further, I would like to mention here that after filing this petition in the Registry of this court on 17.1.13, vide order dated 31.1.13 the operation of aforesaid interim order dated 9.11.12 passed by the SDM was stayed and, such order is still in existence.

7. After hearing the counsel, keeping in view their arguments advanced, I have carefully gone through the papers placed on the record so also the aforesaid interim order. After perusing the same, I am of the considered view that after remanding the matter by the subordinate revisional court vide order dated 13.9.12 in Cr.R.No.99/12, the SDM was bound to proceed and decide the matter strictly in compliance of the direction of the order of revisional court and meanwhile such court should not have passed any interim order to create any complication in the matter. If there was any need of such order then the applicant or the concerning party could have been directed to approach the revisional court for appropriate direction in that regard because court of SDM had to decide the matter only in compliance of the direction of the revisional court. It is also mentioned that such case is still pending in the court of SDM which is to be adjudicated in compliance, of the concerning Chapter of the Cr.P.C relating to public nuisance and of the direction of the subordinate revisional court.

8. In view of the aforesaid discussion so also in the available circumstances, instead to pass any order on merits of the matter or to express any opinion in that regard, this petition is disposed of with a direction to the Court of SDM to take an endeavor to expedite the trial of the impugned case on merits in accordance with the provision of the Cr.P.C so also in compliance of the aforesaid direction of the subordinate revisional court given vide order dated 13.9.12 in Cr.R.No.99/12 and conclude the same within ninety days from the date of receiving the certified copy of this order under intimation to this court.

9. However, till disposal of the aforesaid proceedings of the SDM, the interim order passed by this court on 31.1.13 staying the operation and effect of interim order dated 9.11.12 shall remain continued for ninety days. If the case is not disposed of by the SDM within the prescribed period then such court shall be at liberty to make

the prayer to this court for extension of such time. The assisting counsel of the applicant is directed to file the certified copy of this order in the court of SDM within ten days to comply the aforesaid direction.

10. The petition is disposed of as indicated above. (U.C.Maheshwari) Judge MKL

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