

James Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1119102

Court : Kerala

Decided On : Jan-09-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : James

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD THURSDAY, THE 9TH DAY OF JANUARY 2014 19TH POUSHA, 1935 CrI.MC.No. 122 of 2013 ()
----- (AGAINST THE

JUDGMENT

IN WP(C) 5295/2012 OF DATED 11-10-2012) PETITIONER:- -----
JAMES, AGED 57 YEARS, S/O. MATHAI, KATTARUKUDY HOUSE, KUNDHANI THOVARIMALA P.O., NENMENI AMSOM, NENMENI DESOM, SUTHLANBATHERY TALUK. BY ADVS. SRI. V. RAJENDRAN (PERUMBAVOOR) SRI. GEORGE VARGHESE KIZHAKKAMBALAM RESPONDENTS:-
----- 1. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR , HIGH COURT OF KERALA, ERNAKULAM 2 DISTRICT COLLECTOR, WAYANAD DIST, CIVIL STATION, KALPETTA-673 122 3. TAHSILDAR, SULTHAN BATHERY TALUK, MINI CIVIL STATION, SULTHAN BATHERY-673 592 4. VILLAGE OFFICER, NENMENI VILLAGE, NENMENI P.O, 673 592 5. SUB

INSPECTOR OF POLICE, AMBALAVAYAL POLICE STATION, AMBALAVAYAL,
PO-673 593 BY PUBLIC PROSECUTOR SRI. REJI JOSEPH THIS CRIMINAL
MISC. CASE HAVING BEEN FINALLY HEARD ON 09-01-2014, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:- KKS CrI.MC.No. 122 of 2013 ()

----- APPENDIX PETITIONER(S) ANNEXURES:-
----- ANNEX.A1:-TRUE COPY OF COMMON

JUDGMENT

IN WPC NOS 24098/2011, 28522/11, 34919/11 875/12 AND 52952/2012 OF THIS
HON'BLE COURT DTD 11-10-2012. ANNEX.A2:-TRUE COPY OF CONSENT
ISSUED FROM THE DISTRICT OFFICE OF KERALA STATE POLLUTION
CONTROL BOARD BEARING NO PCB/WND/ICO/222/2007 DTD 12-12-2012.
ANNEX.A3:-

ORDER

NO A4-29025/12 DTD 24-12-2012 OF 3D RESPONDENT PASSED UNDER
SECTION 133 OF THE CODE OF CRIMINAL PROCEDURE. ANNEX.A4:-TRUE
COPY OF NOTICE ISSUED BY V RAJENDRAN PERUMBAVOOR COUNSEL OF
THE PETITIONER TO THE 3D RESPONDENT ON 27-12-2012. RESPONDENTS'
EXHIBITS:- NIL ----- //TRUE COPY// P.S.TO JUDGE
KKS A.HARIPRASAD, J.

----- CrI.M.C. No.122 of 2013
----- Dated this the 9th day of January, 2014.

ORDER

Petitioner challenges Annexure A3 order passed by the 3rd respondent in the
capacity as the Executive Magistrate by invoking power under Section 133 of the
Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The impugned order reads
as follows: "On enquiry it is revealed that the Pig farm running by Sri.James,
Kattarkudi House, Thovarimala (P.O) Nenmeni Village does not keep the minimum
distance of 100 metres from the residential area and not availed license from the
concerned Grama Panchayath as per circular No.A3-1721/2011 dated 9-5-2011 of
Deputy Director of Panchayath, Wayanad. The Health Inspector, P.H.C., Chullioode
also issued notice showing the unhygienic conditions existing in the premises of

the Pig Farm. In the above circumstances I, K.K.Vijayan, Tahsildar and Executive Magistrate, S.Bathery under powers conferred upon me as per section 133 of Criminal Procedure Code do hereby ordered to stop the pig farm running at ward No.3 of Nenmeni Grama Panchayath by Sri.James, Kattarkudi House, Thovarimala (P.O), Nenmeni Village forthwith." CrI.MC No.122/2012 2 Annexure A4 is the lawyer notice issued by the learned counsel for the petitioner stating that the petitioner was conducting a piggery in his property for more than 12 years. Local people filed petitions before the Grama Panchayat, Ombudsman for Local Self Government, etc alleging nuisance. Petitioner approached this Court with W.P.(C) No.5295 of 2012. Annexure A1 is the judgment passed by a learned Single Judge in that matter along with other connected cases. The operative portion of the judgment reads as follows: "These Writ Petitions are therefore disposed of with the following directions:

1. The 1st respondent is directed to consider the applications for licences submitted by the 2nd respondent, evidenced by Exts.P14 and P15 in W.P(C) No.34919 of 2011, in accordance with law and in the light of the observations made above and to pass appropriate orders thereon in accordance with law, as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment; ii) For the purpose of enabling the 1st respondent Panchayat to consider the applications for licences submitted by the 2nd respondent, the 3rd respondent shall consider the application for consent, which shall be submitted by the 2nd respondent within a CrI.MC No.122/2012 3 week of receipt of a copy of this judgment, after conducting a fresh inspection of the pig farm and appropriate orders shall be passed thereon within a period of two weeks of the date of receipt of a copy of the said application; iii) The 3rd respondent Pollution Control Board shall direct the 2nd respondent to furnish a bank guarantee for a suitable amount to be stipulated by the said authority for the purpose of ensuring that the conditions subject to which consent is granted are scrupulously observed, with the specific condition that the same would be enforced in the event of there being any violation of the conditions."
2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. Grievance of the petitioner is that Annexure A3 order passed by the 3rd respondent is in violation of the mandate of Section 133 Cr.P.C. It is clear from Section 133 Cr.P.C. that whenever a District Magistrate or a Sub Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving a report of a Police Officer or other information and on taking such evidence (if any) as he thinks fit, considers that the conduct of any trade or occupation or the keeping of any goods or merchandise, is injurious to the health or physical CrI.MC No.122/2012 4 comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated, such Magistrate may make a conditional order requiring the person causing such nuisance or carrying on such trade or occupation, etc. within a time to be fixed in the order to desist from carrying on or to remove or regulate in such manner as may be directed. It is essential that a show cause notice is issued why the order should not be made absolute. The issuance of show cause is the mandate of Section 133 Cr.P.C. and it is essential for subsequent steps to be taken as provided in Sections 136 and 138 Cr.P.C. These aspects are clearly absent in Annexure A3 order. Hence it cannot be considered as a properly passed conditional order. At the same time, legally Annexure A3 cannot be treated as a final order also because the petitioner was not given an opportunity to show cause against the observations made in Annexure A3. Hence, viewing from any angle, I find that Annexure A3 order is not legal.

4. As this Court observed in Annexure A1 judgment, the petitioner cannot run a piggery without obtaining licenses from competent authorities in this regard. Therefore, it is made clear that merely because Annexure A3 is set aside, it will not automatically confer a right on the petitioner to run the objectionable piggery without getting appropriate licenses. CrI.MC No.122/2012 5 In the result, petition is allowed. Annexure A3 order passed by the 3rd respondent under Section 133 Cr.P.C. is hereby set aside. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks